

240.

C A S E
OF
WILLIAM BRERETON, Esq;

Late Commander of His Majesty's Ship D U K E.

TO WHICH IS ADDED
AN APPENDIX;

CONTAINING
A CORRESPONDENCE BETWEEN THE EARL OF
SANDWICH AND CAPTAIN BRERETON;
MINUTES OF TWO COURTS-MARTIAL;
A REPORT FROM THE LORDS OF THE ADMIRALTY;
AN ORDER OF HIS MAJESTY IN COUNCIL;
AND OTHER PAPERS.

Adfit
Regula.

L O N D O N :

PRINTED FOR J. ROBSON, IN NEW BOND-STREET.

M.DCC.LXXIX.

292

ADVERTISEMENT.

THE publication of the following Case will, it is hoped, require no apology. To submit to the sentence of a Court, so far as the law exacts submission, is a duty. But, if a Court should assume powers which do not belong it; should violate the rules which it ought to observe; should admit evidence which it ought to reject: If there be reason to fear, that the conduct of such a Court should be drawn into a precedent fatal to the property, the lives, and the honor of a profession, upon which the safety and the glory of the nation depend; it is not surely a matter of permission, but of duty, to bring the proceedings of such a Court to the tribunal of the Public.

In perusing the remarks on the evidence the reader may perhaps object, that the contradictions should have been noticed at the time. By the Court they ought to have been. By Captain Brereton they would have been, had he conceived that he was standing before a Court impowered to try. But, early in the examination something dropped from one of the witnesses, which led him to suspect, that a conspiracy had been formed against him. He was fearful, that unguarded questions might prevent a full disclosure of what he would be better prepared to drag to light, if the Court,

2 keeping

keeping—and he expected, and had a right to expect, that it would keep—within the limits of the powers with which it was invested, had reported either that there were, or that there were not, grounds for a Court-Martial.

So much for the Case. For the Appendix, the greater part of it speaks for itself. Three articles are added which have no immediate relation to the present Case. But it happened, as it sometimes will, that malicious persons, eager to collect every thing, which could precipitate one whom they considered as a falling man, have thrown out insinuations against the conduct of Captain Brereton in the East Indies. He has therefore added to the Appendix, the Minutes of the Court-Martial which sat upon his conduct there; the Report of the Lords of the Admiralty, upon the proceedings of that Court; and the Order of his Majesty in Council in consequence of that Report. These he submits to the reader without a single comment. He hopes only he may, without vanity, display the testimony of a Saunders and a Keppel: he may add, he hopes, that the zeal of friendship*, and the impartiality of history†, have erected a monument to his conduct in the East Indies, which will speak in his defence when the name of his enemies shall be forgotten.

* See the Historical Narrative of the Squadron under the command of Vice Admiral Watson. By Edward Ives, Esq; folio 129, &c.

† See Orme's History, Vol. II. folio 512, &c.



THE
CASE
OF
WILLIAM BRERETON, ESQUIRE,

Late Commander of His Majesty's Ship DUKE.

Introduction.

TO speak of his own conduct is one of the most irksome tasks, to which a man of any feeling can, at any time, be called. That irksomeness will not certainly be diminished, if the object of such a task be to remove unfavourable impressions, to throw off unmerited blame; it will be greatly enhanced, if the exculpation of himself should of necessity imply a crimination of others.

Such is the situation to which the writer of the following narrative finds himself unfortunately reduced. A situation from which, however painful it may be, neither the regard which he feels for his own honour, nor the duty which he owes to his family, his friends, and his profession, will permit him to shrink.

The conduct of Captain Brereton, in the skirmish between the fleets of Great Britain and of France, had, long before he knew it, been impeached by anonymous writers in the daily papers. Had the tale of calumny been confined to these channels, had it been supported by no better authority, he might perhaps have treated it with silent contempt. It required no great effort of patience to suffer with his Commanders; to share the common fate of the best and most valuable men of every profession. To such a tale, then, so conveyed, and only so supported, he might perhaps have concluded, that the letter of the Commander in Chief would have been more than a sufficient answer*.

But when uncommon pains were taken to circulate the tale among the Officers of the fleet; and not only to give it circulation, but credit; it began to deserve a more serious attention. To be conscious of his own innocence was not here enough: the honour of the service required more. The honour of the service requires, that the conduct of

* See Appendix (B.) folio 10.

THE CASE OF

every Officer be not only blameless, but above suspicion in the eyes of the Commanders under whom, and of the Officers with whom, he is to serve.

Captain Brereton calls on the Admiral to enquire into the truth of them.

Impressed with this idea, and conscious that he had done his duty, Captain Brereton applied to the Commander in Chief; stated, that reports injurious to his honour had been circulated in the fleet; and called on him to enquire whether there was any foundation for these reports; whether any thing had appeared in his conduct, during the whole time of the action, which had rendered him unworthy of his share of the common praise, bestowed by the Commander on all the Captains of the fleet.

Unexpected event of that enquiry.

That an enquiry, which nothing but the sense of having discharged his duty could have tempted him to demand, should fail, in any degree, in the minutest point, to vindicate his character was what he certainly could not have suspected: that such an enquiry, so demanded, should have brought on him an opinion, a resolution—for he cannot call it a sentence, or judgment—of censure, was what he certainly could not have believed to have been within the verge of possibility.

To appreciate the opinion, it is necessary to state the proceedings, of the Court;

That a Court sate to enquire into the conduct of Captain Brereton; that this Court proceeded to try him, to condemn him, to deprive him of his command; are matters of public notoriety. These are facts which the idle heard with all the greediness of undiscerning curiosity; on which the envious commented with all the rancor of artful malevolence. 'Tis the natural order of things. It was not unnatural that others, of sounder judgments and of better natures, but strangers to Courts Martial, should be strongly biased by the opinion of this Court. To the opinion of Courts Martial they will not perhaps pay such implicit deference, who know that the Judges who compose these Courts, not having the same checks as the Judges of other Courts, may sometimes be less free from prejudice; that, if unprejudiced, they are not always equal to the task of discerning and sifting, of combining and digesting evidence; that, if any doubt arise, they are to be advised by the Judge Advocate; that, in Courts held at sea, the Judge Advocate is a man appointed *pro re nata*: that it is, therefore, not improbable, that he may be totally ignorant of the very points on which he is to advise the Court. Knowing this, men of candor will hold themselves in suspense, will wish to see the proceedings, before they subscribe to the opinions of a Court. But should it be proved—and Captain Brereton conceives, that in the course of this narrative it will be proved—that the Court which sate on board the Queen had no power to try him; that he never was in the custody of that Court, never appeared before it as a prisoner; that no one of the previous steps were taken, which the instructions of the Crown and the commands of Parliament have rendered indispensably necessary before a Court can proceed to trial; that no charge was before the Court; that to constitute even a subject of enquiry, one of the Members of the Court acted in the triple capacity of Prosecutor, Witness, and Judge; that during the enquiry,

such

CAPTAIN BRERETON.

3

such evidence was admitted, as none but a Court of Inquisition ever did admit: If these things be proved, the candid surely will allow, that the sentence of such a Court is, to the eye of Reason at least, null and void; that the proceedings of such a Court should not barely excite, on behalf of Captain Brereton, that commiseration, which benevolence sometimes extends to error; but should inspire that generous indignation, which honor feels for injured honor.

These facts it is the purpose of the following narrative to state. And Captain Brereton enters on the task with the less unwillingness, because he is persuaded, that, whilst it reinstates him in the good opinion of the world; whilst it restores to him that cordial friendship of his brother Officers, which he considers as the best reward of his past services, and the fullest source of his future happiness; it will moreover be of some use to those Officers, will serve as a beacon to guide them clear of the difficulties which have been thrown upon Captain Brereton, and under which a man less injured to persecution might have sunk.

To render his own justification full and compleat, it will not be sufficient to examine the proceedings of the Court. It will be necessary, at least it will be useful, to go back to the first appointment of Captain Brereton to the command of the Duke. It may be useful, at least, to enquire what measures he took to hasten the equipment of the ship; to put her, as soon as possibly she could be put, under the orders of the Admiral. It may be useful to mark his conduct during the time which intervened between the first appearance of the French and the signal to engage. If, during either of these periods, he betrayed any backwardness, created any unnecessary delays, omitted any means in his power to hasten his junction with the Admiral, or to put his ship in a situation to engage the enemy, his behaviour in the day of battle will be liable to just suspicion. If, on the other hand, the ship was equipped with uncommon dispatch; if extraordinary exertions were made to hasten her junction with the Admiral; if, after that junction, he did all that could be done to bring her into action; the public will not readily, or without the most unequivocal proofs, be led to believe, that Captain Brereton could, all at once, disqualify himself from acquiring that honour, the means of acquiring which he had made such exertions to obtain.

After this review, Captain Brereton will explain to the reader—By whom, in what manner, at what time, it was first announced to him, that unfavourable reports were spread against him—What means were employed to give such weight and authority to these reports, as induced Captain Brereton to demand of the Admiral, that his conduct might be submitted to enquiry—In what terms the demand was couched—What powers were given to the Court which was summoned in consequence of that demand. He will then call the attention of the reader to the proceedings of that Court: he will follow them step by step, pointing out as he goes—How the powers with which the Admiral invested them were executed; in what manner, and to

To state which is the purpose of the present Narrative.

Necessity of carrying the Narrative farther back;

in order to form a competent judgment on the proceedings of the Court.

what a degree, they were exceeded. He will shew, that without a power to try, they proceeded to try; and to try a man too, who was not in their custody: That no charge having been notified to Captain Brereton, nor even exhibited to the Court, they suffered one of their members, as prosecutor, and as witness, to establish a charge, and then again to take his seat as a judge: That they instantly proceeded, not only to inquire into the truth of this charge, but to try him for the same, without warning him, that, though summoned only to enquire, they would proceed to try: That being authorized to enquire into the conduct of Captain Brereton on one given day, yet, in order to support this charge, they without authority carried their enquiries back to four other days; and without reproof admitted evidence the most illegal, most dangerous, that was ever given in a Court. He will shew, that with all these unfair advantages they were forced unanimously to declare, that Captain Brereton did all that could be done to bring his ship into close action. When the reader is master of these facts, to his candor Captain Brereton will leave it to determine, by what authority, upon what grounds of law, on what principles of equity or of honour, this Court proceeded to try a man whom they had not legally prepared for his defence; to convict a man whom they could not legally try; to punish a man whom they could not legally convict; to deprive a man of a command, the great duties of which they unanimously declare he had done all in his power to fulfil.

Narrative.

16 Apr. 1778,
Captain
Brereton
appointed to
the com-
mand of the
Duke.

2 May, 1778,
Takes the
command of
her.

State in
which he
found her.

THE commission appointing Captain Brereton to the command of the Duke, bears date the 16th day of April, 1778. Captain Brereton was then in town, engaged in the transaction of a business of great importance to his own private fortune. To this business a sense of public duty would not allow him to dedicate many days.

On the 2d of May he arrived at Plymouth, and took on him the command of the Duke.

The Duke is a ninety-gun ship: her complement therefore, on a war-establishment, should be 750 men, and six Lieutenants. But, when he took the command, Captain Brereton found only two Lieutenants and fifty men; with neither Mate, Midshipman, nor Boatswain. The Duke was besides a new ship. She had been cut loose to clear her of the Torbay when on fire; and was now driven up Hamoze, towards Saltash. Much remained to be done to her both on the inside and on the outside. The carpenters were then, and for three weeks thereafter,

CAPTAIN BRERETON.

5

thereafter, employed in fixing blocks, and in doing the other works necessary to fit her for service.

The more work remained to be done to the ship, the fewer were the hands to execute that work, the more did Captain Brereton conceive it to be the duty of himself, and of the few Officers who were on board, to counteract by extraordinary exertions the delays to be feared from extraordinary difficulties. On the ninth of May, the ship having been warped down off the dock, Captain Brereton began to work upon her: without a Boatswain, without a petty Officer, such was the diligence with which he proceeded in the equipment of the ship, that on the 23d of June he was enabled to inform the Earl of Sandwich, that, so far as depended on him, the Duke was ready for sea; nothing more being required than to complete her complement by the addition of a hundred and eighty men. And so eager was Captain Brereton to obtain this completion of his complement; so sensible of the critical situation of Admiral Keppel; so anxious that the Duke might be in readiness to strengthen the Admiral, that he ventured to point out to his Lordship the speediest, though perhaps an uncommon, method of completing her complement*.

9th May,
1778.
The Duke
being warped
down, Cap-
tain Brere-
ton began to
work upon
her.

On the second of July, just two months after Captain Brereton took on him the command of the Duke, she sailed into Plymouth Sound. Here new difficulties arose. The wind blew right in: and the Master, less eager or more prudent than Captain Brereton, would not venture, under those circumstances, to turn out the Duke.

2d July,
1778.
The Duke
sails into the
Sound.

Convinced in his own breast that it was possible to turn her out of the Sound; knowing of what importance the addition of such a ship might be to Admiral Keppel; Captain Brereton conceived, that, in such a moment, it would be prudent to risk what, at another time, it might be rashness to attempt. He therefore applied to the Admiral, and to the Commissioner and Officers of the yard, for a pilot; who conducted the ship safe to sea on the 8th of July. On the 9th she arrived off St. Helen's, and put herself under the command of Admiral Keppel.

9th July.
Joins Admi-
ral Keppel at
St. Helen's.

Hitherto then, and during this first period, there was no mark of backwardness on the part of Captain Brereton, no unnecessary delays were created. On the contrary, extraordinary exertions were made; uncommon difficulties were conquered; and that was effected by Captain Brereton, in the space of two months, in the execution of which a much longer time is usually employed. The professional reader will know the truth, and feel the force, of this remark; and when he casts his eye on the letters which passed between the Earl of Sandwich and Captain Brereton on this very subject†, he will at once applaud the zeal and activity of the noble Lord, who presides in the naval department; and will be ready to allow, that the terms, in which his Lordship expressed his approval

This dis-
patch un-
common.

* See Appendix (A.) N° X. P. S.

† See Appendix (A.) throughout, folio 1—10.

of

of Captain Brereton's conduct, though heightened perhaps by the glow of friendship, were not altogether unmerited*.

23d July,
1778.
French fleet
discovered.

The Duke proceeded with the fleet on a cruise. Till the 23d of July nothing remarkable occurred. On that day the Admiral made the signal for the line of battle. The weather was so hazy, that from the Duke the French could not be descried; nor was it till the afternoon that Captain Brereton knew whether the signal was made in consequence of discovering the enemy, or merely with a view of manœuvring the fleet. When the signal was thrown out, the ships were extended, so that it required no small space of time to form the line. The line, however, was formed. The Duke was in her station, cleared for action, and ready to engage; the people at their quarters, full of spirits, receiving, with their usual cheerfulness and gallantry, the exhortations of Captain Brereton to be attentive to the commands of their respective Officers. Towards the close of the day the enemy were seen from the deck, in appearance numerous, and in situation forming a line. We too kept our line. The men on board the Duke lay, or rather sat, all night at their quarters: Captain Brereton passed the night on the quarter-deck. The night was cloudy, and there fell frequent showers. The enemy could not be seen.

24th July,
1778.

At the break of day the enemy were again descried in the north-west quarter: their distance was encreased. Two of their large ships had parted company, and were got on our lee quarter, steering to the S. E. with all the sail they could croud. The English were between them and their fleet. We carried a prest sail all day in chase of the enemy. The apartments of Captain Brereton being laid open, he sent his dinner to the ward-room. It was not a moment for ceremony. The evening was cloudy, but, provided with a good telescope, Captain Brereton was able to observe and distinguish the manœuvres of the French. He saw them set their top-gallant sails, and croud all the sail they could to get from us. Still they were in sight, and therefore every man kept to his quarters; and the Captain passed this, like the preceding night, on deck.

July 25th.

As the day-light appeared on the 25th, the enemy were still seen in the N. W. quarter, but their distance was yet more increased. They spent the day in forming their line, in beating up their most leeward ships to the windward; cautious not to lose any ground, or to near us. Our fleet carried all day a stout soil, trying to near the enemy. Captain Brereton felt the effects of two nights watch, and two days continual fatigue. He felt, but he did not complain. It was not a time to complain. But the disinclination of the French to engage being so visible, he ventured to lie down in his cot, with his cloaths on, for a few hours during the course of the night. This rested his limbs, but rather increased his cold, and brought on a feverish disorder.

* See Appendix (A.) N^o IX. folio 9.

CAPTAIN BRERETON.

7

When the report of the sick was made on the 26th, Captain Brereton informed the surgeon of the state of his own health. His fever was high; but the surgeon finding him resolute not to submit to severer remedies, which might impede him in the course of action, contented himself with prescribing cooling powders, to be repeated two or three times a day, and tamarind-water to be frequently drank to allay his thirst. These circumstances may appear trifling; yet on these trifles did the keenness of malice build a charge, which deprived Captain Brereton of his command. The day was spent in chace: the Duke was to leeward of most of our ships. Anxious to get to windward, Captain Brereton crouded all the sail the ship could bear; spent the night in watching; rejected the pressing invitations of his Officers, to sleep in the ward-room; examined the log-book; consulted with the Master; and was attentive to lose no opportunity that might occur of nearing the enemy.

26th July,
1778.

On the morning of the 27th the French fleet were seen considerably to windward of us in the south-west quarter; but, during the course of the night, the Duke had gained to windward on our own fleet; three ships were now to leeward of her. To these ships the Admiral made the signal to chace to windward. In obedience to this signal they were able to croud sail, and so got into the Admiral's wake. The wind changing a little in our favour, the weathermost of our ships looked up for the enemy. And the enemy, perceiving our eagerness to get up with them, tacked to cross our fleet. This manœuvre gave them an opportunity of distressing our weathermost ships. They seized it with great judgment; and so disabled many of our ships, that, when the Admiral tacked to pursue, they could not follow. Of this too the enemy took advantage. They wore and formed the line again to leeward: their heads toward the English; their best ships in the van; those which had suffered in the rear. Our fleet was now divided and extended. In the afternoon the Admiral wore to join the disabled ships. He made the signal for the line of battle ahead; and before the close of the day the line was in some measure formed. The French remained to leeward. There was, however, no great probability that the fleets would engage in the night. The company of the Duke were therefore permitted to refresh themselves; the Captain retired to the ward-room with his Officers, to enjoy the only regular meal they had taken that day. After this repast the Captain came upon deck: the Officers followed. The Captain of Marines was particularly urgent with Captain Brereton to consider the state of his health; to indulge the demands of nature, and suffer himself to take a little rest. But all the indulgence, which Captain Brereton could be persuaded to take, was to order his cot to be brought to his cabin, on which he sate down, wrapt up in his cloak, his back resting against the bulk head. He did not continue this indulgence, without interruption. The sound of voices on the quarter-deck awoke him. He rose, looked out, saw that the Duke kept her station, near to Vice Admiral Harland: and that

27th July,
1778.

every

every thing was quiet. He returned to his cot, and towards the close of the night, worn out with fatigue, a sounder and more refreshing sleep overtook him.

28 } July,
29 } 1778.

At day-light on the 28th he was again upon deck. From the deck three only of the enemy's fleet appeared; their steering sails were set on both sides; and they were standing to the S. E. after their fleet, which was still discernible from the mast-head. For two days the English continued laying to, repairing their rigging, and waiting the motions of the enemy.

Fleet returns
to Plymouth.

The two days elapsed, the Admiral concluded that the enemy were safe in the harbour of Brest; and would not again tempt the fortune of war. He too returned to Plymouth to repair the ships, and fit them for another cruise.

No Com-
plaint made
against Cap-
tain Brere-
ton.

The fleet continued three weeks in Causand-Bay. If during this second period, from the time of the enemy's appearing to the day of the engagement, there had been any thing reprehensible in the conduct of Captain Brereton, that was the time to prefer a complaint. The man who knew and could prove him to have been guilty of disaffection, of cowardice, of neglect, or of any thing misbecoming an Officer, was a traitor to his country, if he did not then prefer a complaint against him; if he then delayed to bring him to justice; and not only delayed to bring him to justice, but suffered him to go out a second time with the command of such a ship as the Duke, in a moment when the good or ill conduct of such a ship might decide the event of a day, on which the fate of the empire might depend.

No other
mark of dis-
approbation
shewn.

During these three weeks no complaint was preferred. But though no formal complaint was preferred, was there nothing in the conduct of the Admiral; or of the Vice Admiral in whose division he served; or of the Captains of the fleet; or of his own Officers; that expressed a disapprobation of his conduct?

By the Ad-
miral.

The Admiral's public letter has been read by all the world. It particularly commends the conduct of Sir Robert Harland and Sir Hugh Palliser. It declares, that "all the ships returned the enemy's fire as they could close up;" that the chace had occasioned their being extended, nevertheless "they were all soon in battle." It commemorates "the spirited conduct" of the Captains of the fleet, as deserving much commendation. To these commendations no exception is made, or insinuated. As soon as the fleet came to an anchor in Causand Bay, Captain Brereton paid his respects to the Admiral on board the Victory: almost all the Captains of the fleet were there. Captain Brereton was received with the same politeness, with the same mark of approbation, as the others. Nay, the Admiral seemed anxious to give express testimony of his approbation: for, in the presence of all the Captains, whilst he lamented that the Duke sailed ill; that, being a new ship, her trim was not yet found out; he added, "But I must do you the justice to say, that you carried a most powerful sail." During his stay at Plymouth the Admiral gave but one public

* See Appendix (B.) folio 11.

CAPTAIN BRERETON.

9

entertainment. To that entertainment a few only of the Captains of the fleet were invited. Among them was Captain Brereton. It is painful to be forced to dwell upon such trifles. But, in the present case, trifles like these are proofs.

Receiving his orders through Vice Admiral Harland, Captain Brereton of necessity saw him often. At all the visits he paid, upon all the occasions when he went to receive orders, the Vice Admiral shewed the same attention, the same politeness, the same marks of good will, to which Captain Brereton had ever been accustomed; but the continuance of which he could not have expected, had his conduct appeared to Sir Robert in a suspicious light.

Nor by the Vice Admiral Harland.

The same mutual intercourse of good offices continued between Captain Brereton and the other Captains of the fleet. Lord Mulgrave, Lord Longford, Sir John Lindsay, Sir Richard Bickerton, Captain Ross, were among those who honoured him with their visits. To these names must be added that of Captain Walsingham. For at that time, it should seem, he had imbibed no suspicion; had heard of no disagreeable reflections. This may fairly be concluded. If he had, the same motive, whether personal friendship or public zeal, which induced him to urge Captain Brereton to clear up his character at sea, would have induced him to urge the same advice in the harbour.

Nor by the Captains of the fleet.

Far from expressing any disrespect to Captain Brereton, his Officers were more than commonly attentive; more than commonly earnest in soliciting his company to their table, and to their parties; more than commonly anxious to convince the world of the mutual harmony which subsisted between them.

Nor by his own Officers.

The reader, then, may easily judge what must have been the feelings of Captain Brereton, when, on the 24th of August, near a month after the action, two days after the fleet had been refitted and was actually sailed on a second cruize, Captain Walsingham came on board the Duke with the professed view of informing him, that he had heard, that, while the fleet was at Plymouth, reports prejudicial to Captain Brereton had been circulated; that they had made some impression in the bosoms of some of his Brother-Captains; impressions which it was necessary to remove. What the substance of these reports might be; from whom they originated; by whom they were circulated; how or when they came to his particular knowledge; on what Captains they had made such impressions; were points on which Captain Walsingham was silent. But, as a friend—as a man therefore, on whom, it must be supposed, they had not made that unfavourable impression, because, it must be supposed, he did not believe them to be true; as a friend—he pointed out the mode which he conceived Captain Brereton should pursue to efface these unfavourable impressions, where they had been imprinted. That mode was a simple one. It was to go to the Admiral; to state to him that unfavourable reports had been circulated; to request him to send for and examine the Officers of the Duke; as the

August 24, 1778. Captain Walsingham informs Captain Brereton of reports to his disadvantage.

Declaration
of the First
Lieutenant
and of the
Captain of
Marines.

persons who were most competent to prove whether there was any, and what, foundation for these reports *.

Astonished at this intelligence, without enquiring into the nature of these reports, from whom, or when, his friend had heard them, Captain Brereton, in the instant, by a first, and, to an innocent man, a natural impulse, determined to begin by giving that satisfaction to Captain Walsingham, which, if given to the Admiral, this Captain conceived would be sufficient to silence the tongue of calumny. He sends for his First Lieutenant, and for the Captain of Marines: to them he abruptly communicates what had passed between Captain Walsingham and himself. Without hesitation, in the presence of Captain Walsingham, both reply, that every thing had been done to get the Duke into close action on the 27th of July. Pleased, it should seem, with the quickness and firmness of this reply, Captain Walsingham exclaims, that the same declaration, made by the same persons, in the presence of the Admiral, would satisfy every one †.

The Admiral
declines to
enter into an
enquiry.

Eager to wipe off aspersions which he knew he had not deserved; happy that so short a mode had been suggested, when, for the moment at least, the fleet being in hourly expectation of meeting the enemy, every door to a more formal enquiry seemed to be absolutely shut; Captain Brereton hastens on board the Victory; relates what had passed to the Admiral; entreats him to send for his Officers, and to examine them as to the foundation for these reports. To the Admiral this examination seemed unnecessary: "He was satisfied," he said, "with the conduct of Captain Brereton: he had written to the Earl of Sandwich, that he was ready to sail again with the same fleet, commanded by the same Captains."

Captain Wal-
singham
urges the en-
quiry, which
the Admiral
again de-
clines.

At that moment Captain Walsingham arrived. The reports had now acquired, in his estimation, a new degree of weight. The Officers of the Duke, he said, were the authors of these reports. He therefore conceived an enquiry to be necessary. He did not inform his friend what could have induced those Officers to hold a language to Captain Walsingham, in the absence of Captain Brereton, so very different from the language which the same Officers had, a few minutes before, holden to that same Captain Walsingham, in the presence of Captain Brereton. The Admiral persisted in his former opinion—"There was no charge," he said, "against Captain Brereton; all enquiry was therefore premature. He was satisfied with Captain Brereton's con-

* At the moment when Captain Walsingham to the character of Friend superadds that of Prosecutor, Evidence, and Judge, he relates this conversation in general terms—"I, says he, acquainted Captain Brereton, that it would be proper for him, at this critical moment, to have his character cleared up."—See Appendix (C.) folio 15.—Captain Brereton appeals to the memory of his friend; who will certainly allow, that the rest of his conversation is here accurately supplied.

† This seems to have escaped the memory of Captain Walsingham, when he answered the first question put to him in the triple character of Prosecutor, Evidence, and Judge. A second question from Captain Brereton brought it, in part at least, to his recollection. See Appendix (C.) folio 14, 15.

“ duct: the French fleet was at sea, and he would soon have an opportunity of silencing the tongue of malice.”

The refusal of the Admiral to order any enquiry to be made, was perfectly consistent with the very strong testimony which he had so recently borne to the character of every Officer in the fleet. For it was but four days since, that, writing to the Board, he expressed himself in these warm and animated terms—“ I shall have great satisfaction in carrying the very same ships in quest of the enemy's fleet, that came into port with me; having the fullest confidence in the zeal, bravery, and exertion of every Officer in the fleet, as well as men serving in it *.”

The refusal of the Admiral consistent with his letter to the Board, dated August 20th.

Nor was the refusal of the Admiral more consistent with his own conduct, than agreeable to the language which would have been holden in the other department of his Majesty's military service. A Lieutenant of the guards conceiving that his character as an Officer had been injured by something which had fallen from his Colonel; repeatedly pressed for a Court Martial on himself. What was the answer? “ His Majesty not having received any report of a charge preferred against you, does not see any foundation for appointing a Court Martial for your trial†.”

And agreeable to what would have been done in the army.

But the delicacy of Captain Walsingham's friendship was not so easily satisfied. Still he urged the necessity of an enquiry. Still he insisted, that instead of giving Captain Brereton that opportunity, which the gallant Admiral pointed out, of silencing the tongue of malice, the enquiry should take place immediately, and before we could meet the French. This perseverance of his friend weighed, as it ought to weigh, with Captain Brereton. And Admiral Campbell inclining to the same opinion, though he could be no stranger to the letter which has just been quoted, Captain Brereton was at once determined: and requested in writing what before he had verbally intreated.

Captain Walsingham still persists, and prevails.

The reader sees then by whom, in what manner, at what time; it was first announced to Captain Brereton, that unfavourable reports had been spread against him. It was by Captain Walsingham, in a friendly conversation: not immediately after the action; when minute circumstances might have been remembered; not whilst the fleet was in the harbour, when, without any prejudice to the service, a formal and full enquiry might have been made, and a regular trial might have been had: But it was near a month after the engagement: when the fleet was at sea: when the enemy was known, or at least believed, to be at sea: when we were in hourly expectation of meeting.

Review of the first notification of these reports.

The reader sees too by what means such weight and authority were given to these reports, as, at such a moment, and when the fleet was in such a situation, induced Captain Brereton to demand of the Admiral,

And of the means used to give them weight.

* Extract of a letter from Admiral Keppel to Mr. Stephens, dated on board the Victory in Causand Bay, 20th August 1778. Of which extract an office copy was given to Captain Brereton, in consequence of his request made in writing to the Lords Commissioners of the Admiralty.

† See the Case of Nicholas Nugent, Esquire, folio 61.

that his conduct might be submitted to enquiry. The sensibility of private friendship, and the activity of public zeal, urged Captain Walsingham to take up reports, begotten by unknown parents, and left to perish with many of their kin, unless relieved by the fostering hand of friendship, or of zeal: the same amiable and laudable principles compelled him to persevere in opposing the opinion of the Admiral, and in his endeavours to convince Captain Brereton, that it was necessary to submit his conduct to enquiry.

24 August,
1778.

Captain
Brereton
writes to the
Admiral.

In deference to these opinions, Captain Brereton requested once more of the Admiral, that such an enquiry might be made. The request was now conveyed in writing, and couched in the following terms:

“ Having heard some aspersions are thrown on my conduct on the 27th of July last, when the fleet under your command were chasing and attacking the French fleet, I desire, Sir, you will be pleased to order my conduct to be enquired into on that day*.”

This was not
a request for
a Court Mar-
tial to try.

These are the very words of the letter. What is it this letter asks? That the Admiral should assemble a Court Martial to try Captain Brereton! Certainly not. He was too well acquainted with the rules of the service, and with the laws which regulate the proceedings of Courts Martial, to think of making such a request, at such a time. He knew, that an order to summon a Court Martial at sea must be grounded on a specific charge, exhibited in writing, either by the Admiral himself, or by some complainant addressing the Admiral: that if the charge be exhibited to the Admiral, witnesses must be examined upon oath; their depositions taken in writing; and shewn to the Admiral; that whether the charge were exhibited by, or to, the Admiral, a copy of that charge must timely, and before the trial, be sent to the party accused†: He knew, that, from the moment a Court Martial was assembled, to the moment when sentence should be given, no one of the members could quit the ship in which the Court was first assembled‡: He knew that the proceedings of Courts Martial are in general slow and deliberate: And he was not quite so mad, as, at the very moment when the enemy was expected, to request the Admiral to do an act, which might deprive thirteen ships of their Commanders.

But a Board
of Enquiry.

What is it then which the letter asks? Clearly this: That the Admiral would give orders for assembling a Board of Enquiry. The question before such a Board would be short and simple; their sittings few; the members under no such restraint as the members of a Court Martial assembled to try. From the assembling of a Court of Enquiry then the service could sustain no injury; and the report of such a Court would have been effectual to every purpose of discipline. Had there appeared grounds for the assembling of a Court Martial to

* See Appendix (C.) folio 13.

† See Regulations and Instructions relating to his Majesty's service at sea. Title—Of Courts Martial—Articles IV. V.

‡ See 22 Geo. II. c. 33.

try,

try, they would have reported it; and on such a report the Admiral, if he saw a fit opportunity, or the Admiralty at the return of the fleet, would have ordered a trial: and in the mean time it was competent to the Admiral to suspend Captain Brereton, to put him under arrest, to appoint, *pro tempore*, another Captain to the Duke.

In what sense does the Admiral appear to have understood the tenor of Captain Brereton's request? In the sense in which it was made: For in consequence of the request he ordered a Court to be summoned. And to this Court, what powers did he delegate? The powers which are delegated to a Board of Enquiry. These and no other. The order for assembling the Court does indeed stile it a—*Court Martial*—Courts consisting of military men, whether their powers be simply to enquire, or to enquire and try, are often called Courts Martial. Whether this was intended to be a Court of Enquiry, or a Court to try, will depend on the powers given in the order to assemble the Court. Now the order begins by reciting, that it was issued in consequence of a request of Captain Brereton: it states that request to have been—"that his conduct might be enquired into."—It proceeds to empower and direct the Vice Admiral to assemble a Court, for the purpose of doing that, which Captain Brereton had requested; viz.—"to enquire into his conduct."—To this enquiry it directly limits the operations and powers of the Court; referring them to the original letter of Captain Brereton "for their farther information*."

The powers given to the Court were the powers belonging to a Court of Enquiry.

Not one word does the order say about trying. Yet the power to try must be given in express terms. It cannot be implied, or intended, under the power to enquire. The power to enquire might be implied or intended under the power to try; because a trial of necessity implies an enquiry. It is an enquiry and something more. But the power to try cannot be implied or intended under the power to enquire; because an enquiry does not of necessity imply a trial; but may be compleat and perfect without it.

No power given to try. Which must be expressly given.

It would be endless to cite orders for trial in support of this assertion. Let us, however, examine two precedents; one in the naval and one in the land service.

Precedents.

The Lords of the Admiralty saw cause of themselves to order that a Court Martial should be assembled to enquire into the conduct of Admiral Byng. They meant that he should be tried. In what terms then was the order to Admiral Smith conceived? It directs him in express terms—"To assemble a Court Martial, who are to proceed to an enquiry into the before-recited conduct and behaviour of the said Admiral John Byng, and to try him for the same†."

From the order of the Admiralty to try Admiral Byng.

His Majesty of himself saw cause to assemble a Court Martial to enquire into the conduct of Lieutenant General Sir John Mordaunt. What are the powers with which his Majesty invests this Court? He "authorizes and empowers the said Court Martial to hear and ex-

And from the order of the King to try Sir John Mordaunt.

* See Appendix (C.) folio 12.

† See the printed trial.

" amine all such matters and informations, as shall be brought before them, touching the charge aforesaid, and proceed in the trial of the said Lieutenant General Sir John Mordaunt*." Other cases might be cited. But these are recent. The proofs are in the hands of every one. And Captain Brereton does not know of a single precedent, where any Court has proceeded to try, unless the power to try was given in express terms.

Steps previous to a trial not taken. Captain Brereton was not in custody.

Had the Admiral meant to give to this Court the power of trying, there were many previous steps to be taken. Captain Brereton must have been suspended from the command of the Duke; been put under arrest; been delivered into the custody of the Provost Marshal; been brought by the Provost a prisoner into Court. Such is the constant, unvaried usage of the Navy. Which of these previous steps was taken? Not one.

Though called a prisoner in the minutes.

In the minutes of the proceedings indeed, Captain Brereton is called † the prisoner. But was he under arrest? Was his sword taken from him? Was he in the custody of the Provost? The Judge Advocate knows, the President, every Member of the Court must recollect, that Captain Brereton appeared in his uniform, his sword by his side; a free man, in his own custody.

Effects of this omission.

This misstatement is remarkable. Had Captain Brereton been a prisoner, had he been put under arrest, the time and the reason of that arrest would have been signified with the arrest itself. He would then have known, that he was to be tried: he would have prepared for his defence. But glaring as this inaccuracy must appear, apt as a suspicious man might be to impute it to sinister motives; Captain Brereton sees it in a less culpable light: he does not mean to impute to the Judge Advocate any wilful breach of his duty. He is ready to attribute this false state of the proceedings to inattention, or ignorance.

Only two cases in which Courts Martial can be summoned at sea.

But farther: By the instructions of the King there are only two cases in which Courts Martial can be summoned at sea; the one, on complaints made to the Commander in Chief; the other, where the Commander sees cause of himself to call the same ‡.

If

* See the printed trial.

† See Appendix (C.) passim.

‡ See Regulations and Instructions relating to his Majesty's service at sea, published by his Majesty in Council. Title—*Of Courts Martial*—

Article IV.

All complaints at sea, or in foreign parts, upon which the summoning a Court Martial is to be grounded, shall be made in writing to the Commander in Chief (unless where the same Commander in Chief shall see cause of himself to call the same) in which are to be set forth the particular facts, with the place, time, and in what manner, they were committed. And if any Captain, who is entitled by his rank to sit in the Court, be personally concerned in the matter to be tried, he shall not be admitted to sit at the said trial.

Article

If the order to summon a Court Martial be grounded on a complaint made to the Commander in Chief, that complaint must be in writing, and set forth the particular facts, with all their circumstances of place, time and manner. Previous to the order, witnesses * must be examined upon oath; their depositions must be committed to writing, and shewn to the Commander in Chief: an attested copy of the charge must be sent timely, before the trial, to the party accused, in order to his being the better prepared for his defence.

Previous steps in case the order be founded on complaint.

It is not pretended that any of these previous measures were taken: no complaint was made in writing; no witnesses were examined; no charge was exhibited; no copy of a charge could be therefore given. Nor, had there been a charge exhibited, could that copy have been timely given. The first time that Captain Brereton heard, that any reports had been circulated to his disadvantage, was on the 24th. In the afternoon of the same day the Admiral's order was issued to summon a Court, "as soon as conveniently might be."—If it were a Court of Enquiry, the next day was a proper and a convenient time. If it were a Court Martial, with power to try, surely the President assembled the Court rather sooner than conveniently might be; surely he left no room for giving timely notice of a charge.

These steps not observed.

Where the Commander thinks he sees cause of himself to summon a Court Martial to try; the first step he takes is to call on the party, by letter, to assign his reasons in writing, why, at such a time, on such an occasion, he neglected his duty in such particulars. If the reasons assigned be satisfactory, there the business ends. If they be not satisfactory, the party is regularly suspended by a warrant under the hand of the Commander in Chief, and put under arrest; and the Commander directs the Judge Advocate to send him an attested copy of the charge or accusation, which he means to bring against him. And in the order for assembling the Court, the charge is specified with all the circumstances of time, place and manner. Into this specific charge the Court is directed to enquire. For this specific charge the Court is commanded to try †.

Previous steps where the Court is summoned on cause seen by the Commander.

Neither is it pretended, that any of these previous steps were taken. The order of the Admiral contains, as we have seen, no specific charge;

Nor were these previous steps taken.

Article V.

The Judge Advocate is to examine the witnesses upon oath; take down their depositions in writing, and shew the same to the Commander in Chief; who is to order him to send timely, before the trial, an attested copy of the charge or accusation to the party accused, in order to his being the better prepared for his defence.

* This is clearly the meaning of Article V, as appears from the remaining part of the article, and from the tenor of the two succeeding articles. For this fifth Article, having directed the Judge Advocate to examine the witnesses, take the depositions in writing, and shew them to the Commander, directs the Commander in Chief to order the Judge Advocate to send timely a copy of the charge before the trial—A direction which could not be given here, if this examination were not previous to the order for a trial. This Article contains the duty of the Judge Advocate previous to the trial; as Article VI. contains his duty pending the trial: Article VII after the trial.

† Let the reader compare Admiral Keppel's order, Appendix (C.) folio 12, with Admiral Pocock's order, Appendix (D.) folio 36.

gives

gives no directions to enquire into a specific charge. It gives a general power to enquire into the conduct of Captain Brereton on the 27th of July, and it explains and limits the object of that enquiry, by referring the Court to the letter of Captain Brereton.

Mode pursued to constitute a charge.

The Court, indeed, seemed sensible, that there must be a charge. They perceived that there was neither charge nor prosecutor. It was a difficulty which startled them. How to remove it was a matter of doubt. The Court was cleared. It is probable that, in pursuance of the sixth article of the instructions relative to Courts Martial, they asked for the advice, and were assisted by the opinion of the Judge Advocate. An opinion which Courts are wont to ask, not because the Advocate does, but because they do not, understand law. In the present instance it will not be too much to suppose, that an Advocate who did not know, that to be a prisoner a man must be in the custody of another, might perchance be ignorant, that the same man cannot be at once prosecutor, witness, and judge. However that be, the Court resolved to examine Captain Walsingham, a member of the Court*.

Evidence of Captain Walsingham.

The evidence of Captain Walsingham appears to be in some parts of it defective, in others confused. It states, that, "He had heard that many very disagreeable reflections were made upon the conduct of Captain Brereton, during the time we were in sight of, and engaged with the French fleet." What was the nature of these reflections, by whom they were made, at what time they came to his ear, Captain Walsingham does not state. But he states his advice to Captain Brereton to have his character cleared up at that critical period. He omits in this place to state—where after all it was so natural to state—the declaration made by Mr. Byard and Captain Adair, in the presence of Captain Brereton. But he states very fully what passed between himself and Captain Adair whilst Captain Brereton was gone to dress; then, in the absence of Captain Brereton, Captain Adair, who before had joined with Mr. Byard in declaring that Captain Brereton had used every method to get his ship engaged, "informed Captain Walsingham, that at the time of engaging the French fleet, and very often while we were in sight of them, Captain Brereton was incapable of doing his duty, as he was frequently drunk; that Captain Adair had several times conversed with the Officers of the ship concerning it, and that they all agreed it was so." He states, that "soon after this"—meaning, it is presumed, soon after the private conversation between him and Captain Adair—"Captain Brereton went on board the Victory, and he" (Captain Walsingham) "understood, in consequence thereof wrote to the Admiral." To what the words—"in consequence thereof"—refer, is not very clear. Whether to what had passed between him and Captain Brereton, before the latter went to dress; or to what had afterwards passed in private between him and Captain Adair. This was the substance of Captain Walsingham's

* See Appendix (C.) folio 13.

ham's evidence. And this evidence the Court took for a charge; into which they determined to enquire; for which they determined to try*.

Captain Walsingham having thus discharged the duties of prosecutor and witness, reassumed the character of judge. And here a new difficulty arose. The order of the Admiral limits the enquiry, in express terms, to the 27th of July; limits it, by necessary implication, to that particular portion of the day, when the fleet under the command of Admiral Keppel were chasing and attacking the French†. But the evidence of Captain Walsingham refers not only to the time of chasing or engaging; not only to the whole day of the 27th, but to many other times, and many other days, whilst the enemy were in fight. As this evidence was to constitute the charge, it became necessary to go out of the order, and to carry the enquiry to such periods, either before or after the 27th, as it might be convenient to comprise under the terms of—"very often—" and—"frequently"—used by Captain Adair, and given in evidence by Captain Walsingham. There are Courts whom this difficulty might have startled. But having so happily got clear of another difficulty, and considering that time was precious, it was determined to avoid the tediousness of deliberation, and, by a very candid and compendious method, to entitle themselves to carry their enquiry as far back as the 23d day of July‡.

To support this evidence the Court carries its enquiries beyond the term limited in the order.

The reader sees then what were the powers which the Commander gave to this Court; how they were executed, in what manner and to what degree they were exceeded. He sees that without a power to try, they proceeded to try; and to try a man too who was not in their custody: that no charge having been notified to the party, or even exhibited to the Court, they suffered one of their members as prosecutor and as witness to constitute a charge, and then to return and take his seat as a judge. That they instantly proceeded, not only to enquire into the truth of this charge, but to try the party for the same; without warning him, that, though summoned only to enquire, they would proceed to try: that being authorized to enquire into the conduct of the party on one given day, yet, in order to support this charge, they carried their enquiry back to four other days.

Review of the conduct of the Court.

But here perhaps it may be said, That Captain Brereton might have objected at the time to these irregularities of the Court: but that having waved this privilege then, when it might have availed him; having done more; having expressly consented to the examination of Captain Walsingham; having expressly consented to submit the whole of his conduct to enquiry; it is now too late to object.

Objection I. Captain Brereton consented to these irregularities of the Court.

It may besides be added, That how irregular soever might be the mode in which his conduct came before the Court; how much dis-

Objection II. These irregularities do not alter the merits of the case.

* See Appendix (C.) folio 14, 15.

† See Appendix (C.) folio 12, 13.

‡ The question put by the Court to Captain Brereton, and his answer on this point, are well worthy the reader's attention. See Appendix (C.) folio 15.

grace soever these irregularities might reflect on the knowledge or the candour of the members; yet if his conduct did come fully before them; if it was impartially enquired into; if it was censured on good grounds; the irregularity of the proceedings will make no alteration in the merits of the case.

Answer I.
Danger of
such Argu-
ments.
Grounds of
Captain
Brereton's
consent.

If there be any weight in the first objection, to what a situation may every Naval Officer be reduced! The rashness of folly, or the rancour of envy, spread reports to his disadvantage. The tenderness of friendship, or the officiousness of zeal, take up these reports; listen to them; give them a weight they would never have acquired; then report them to the party; then advise him to call for an enquiry. A Court of Enquiry is summoned: the members, ignorant of law, assisted by a Judge Advocate, who, perhaps equally ignorant of law, has not that ignorance checked by the feelings of an Officer, suffer insidious questions to be put, ensnaring proposals to be made. To refuse his consent to these proposals might be construed into a sense of guilt. To give his consent, though perhaps dangerous, is not without a remedy. The party knows he is standing before a Court of Enquiry: he therefore consents. But behold! this Court is all at once erected into a Court of dernier resort: a Court to try. And the party is to be gravely told, "You have consented—it is too late to object." When Captain Brereton conceived, that he could consent to the examination of Captain Walsingham, and to the enlargement of the enquiry beyond the limitation of the order, he did not think he was standing a prisoner, a criminal before a Court empowered to try him. Ill-digested as are the laws relating to Courts Martial, they are not quite so abhorrent to every principle of our other Courts of criminal jurisdiction, as to leave it to a prisoner to unite in any one man, the character of Prosecutor, Witness and Judge; as to leave it to the prisoner to empower the Court to go out of the charge, and thereby, perhaps defeat the ends of justice*. These laws have provided, "that if any Captain, who is intitled by his rank to sit in Court, be personally concerned in the matter to be tried, he shall not be admitted to sit at the trial:" and they have not yet declared, that a prosecutor and an evidence are personally so little concerned, have their own personal credit so little at stake, as not to fall within the spirit and letter of this exclusion, as to be qualified to sit at the trial. The same laws have provided, that no man shall be tried but on a charge, in which the crime shall be specially set forth†. And shall the party now be told, that the summons, which called him to a

* It is clear that Captain Walsingham conceived this to be only a Court of Enquiry. He has declared in the most public manner, in a most august assembly, in a most important debate, that the same persons cannot be members of a Court Martial empowered to try, and witnesses before that Court—Upon this very ground he urged the impropriety, nay the impossibility, that a Court should be summoned to try Admiral Keppel—"For," says he, "by the Articles of War, the thirty senior Officers then in port, are to be convened to form the Court: which cannot be the case in the present instance, because such Officers must, of course, be the principal evidence."

† See Instructions above recited.

Court of Enquiry, brought him before a Court of Trial? That a consent given in a preparatory Court, and which, in such a Court, it was competent to him to give, shall be binding in a Court of dernier resort, in which it was not competent to give such consent?

To say that, notwithstanding these irregularities, the conduct of Captain Brereton was fully before the Court, and impartially enquired into, is to beg the question. It could not be fully before the Court, nor impartially enquired into, unless he had been fairly prepared for his defence; nor could he be fairly prepared for his defence, unless he had been timely and previously acquainted both with the charge into which the Court meant to enquire, and with the time to which they meant to extend their enquiries. If through the misconduct of the Court, he was deceived on either of these points, then the Court has past sentence without full information or impartial enquiry. Now the letter of Captain Brereton to the Admiral, the order of the Admiral to summon a Court, Captain Brereton's address to that Court*; all shew what he conceived the great object of enquiry to be; viz. whether, during the chase and attack on the 27th, he had done his utmost to bring his ship into action, to annoy the enemy, and to assist the ships of his Majesty. The charge of intoxication he considered only as collateral, or rather as explanatory; meant to prove not only that he did not do his duty, but that he was not in a situation to do it. And he therefore concluded, that if he proved to the Court, that he did his duty during the chase and the attack, he should prove all that the Court wished to know, or indeed was impowered to enquire into. Knowing, therefore, that he could prove by the witnesses he had already summoned, as in fact he did prove to the satisfaction of the Court, that he had done every thing in his power to bring his ship into action; persuaded besides, that he was only standing before a Court of Enquiry, whose powers extended no farther than to report; he was unwilling to delay the time of the Court till he could summon other witnesses. But had he conceived, that he was standing before a Court with power to try, no doubt he would have insisted, either that the Court should keep within the limits of the order, or that they should give him time to summon other witnesses, who having received orders from him during the course of the preceding days, would have been competent to disprove the idle charge of intoxication; because they would have been competent to prove, that, during those days, he gave his orders with the same precision and firmness, as it was proved that he did give them during the time both of the chase and of the action.

After all; if Captain Brereton has dwelt so long upon the unpardonable irregularities of the Court, it is not on his own account: it is out of regard to the common cause of every Officer. It is from the dread he feels, that by his silence, so dangerous a practice may be drawn into precedent; that he may be the unwilling instrument of establishing a method of trial, which may prove fatal to the profession, to

Answer II.
His conduct
not fully be-
fore the
Court.

These irre-
gularities in-
sisted upon
for the sake
of others.

* See Appendix (C.) folio 12, 13, 14.

which he has the honour of belonging; which must sink Courts Martial below the level of Courts of Inquisition; which may leave it equally in their power to screen the guilty or to oppress the innocent; to cover the infamy of the coward, or to stab the honour of the brave*.

Captain Brereton willing to be judged by the evidence given.

For himself, notwithstanding the unfair advantages which the Court permitted to be taken against him, yet such is the nature and complexion of the evidence which was before the Court, that even by that evidence Captain Brereton is willing to stand or fall in the opinion of the candid world. Nay; he is most thoroughly persuaded, that when this mass of incoherent evidence comes to be separated, to be digested under its proper heads, the members of the Court, before whom he stood, will perceive with great surprize, and yet more concern, that to an illegal and arbitrary exertion of power, in trying him without sufficient warrant, they have superadded the cruelty of condemning him without sufficient evidence.

Division of the charge as exhibited by Captain Walsingham.

Waving therefore, for the sake of argument, all objection to the irregularities of the Court; allowing to Captain Walsingham a legal title to the triple character of Judge, Witness, and Prosecutor; allowing to his hearsay evidence the weight due to a legal charge, exhibited in writing, and timely announced: let us examine to what this charge amounts, and into how many parts it may be resolved. It consists of three articles.

I. That very often, while the English were in sight of the French, Captain Brereton was incapable of doing his duty.

II. That at the time of engaging he was incapable of doing his duty.

III. That this incapacity proceeded from intoxication.

Acquitted unanimously of the two first charges.

Of the two first of these charges the Court have unanimously acquitted him; for they unanimously† declare, that he had done every thing in his power, while the French fleet were in sight, to bring the ship into action. He had then done his duty. He could not be incapable of doing it.

Third should have fallen with it.

Had the members who composed the Court acted with the same candor in their collective, as most of them would have acted in their individual capacity, the dismissal of the third charge would have been the natural consequence of exculpation from the two first. For if, all the time the French fleet were in sight, he was collected enough

* It is evident at first sight, that if the consent of the prisoner can erect a Court of Enquiry into a Court of Trial; can impower the Court to go out of the limitation of the order by which it sits, so wide a door would be open to collusion, that justice could never be expected.

† See Appendix (C.) folio 28, 29. Another proof of the ignorance or inaccuracy of the Judge Advocate appears in the drawing up of the sentence. In the resolution on which the sentence is founded, and according to which it should be pronounced, the word—"unanimously"—is inserted; but in the sentence it is omitted.

to do, and actually did do, every thing in his power, to bring his ship into action, what more had the public to require of him? Would it not have been almost as pertinent to have gone on to enquire, what he ate as what he drank!

But appealing to the public Captain Brereton wishes that public to take the matter up *de novo*; to examine the evidence with their own eyes; to decide upon it with their own understandings; and to acquit or condemn him on all the articles of the charge, as, in their own judgment, he shall deserve condemnation or acquittal.

But Captain Brereton submits the evidence in all the articles.

It is not to bias the opinion, or to warp the judgment, but merely to assist the understanding, and relieve the attention of the reader, that Captain Brereton means to sum up impartially the evidence produced in support of each of the articles, into which the charge has been resolved. And it were devoutly to be wished, that a Judge Advocate of integrity, and of abilities equal to the task, were to do this in all trials at sea. Had it been done in this instance, Captain Brereton would not have been under the necessity of appealing to the tribunal of the public.

Evidence summed up.

ON the first article then what is the evidence? Are there any proofs, that between the 23d and the 27th Captain Brereton was incapable of doing his duty?

Evidence on the first article.

Mr. Byard, First Lieutenant of the Duke, deposes, "that on discovering the French on the 23d of July, Captain Brereton ordered every necessary preparation to be made for getting the ship ready for action:" that "in his watch, the Captain always gave him orders to keep the Duke up with the fleet†;" "before retiring to rest, always came upon deck and directed him to keep as near to Sir Robert Harland as possible during the night‡." "That to bring the Duke into better sailing trim he did every thing which the Master and Officers advised, except in removing the guns, when he expected very soon to be engaged§." "That, situated as the Duke was on the morning of action, no endeavours could have brought her into action:" "though from the 23d every means had been used to bring her into her station||." "That Captain Brereton quartered the Officers and men; prepared the ship for action; and did his duty with regard to encouraging the men¶." Mr. Byard adds,— "That he never saw men who shewed more order, or seemed less to

Of Lieutenant Byard.

* See Appendix (C.) folio 16.

† See *ibid.* folio 17.

‡ See *ibid.* folio 18.

§ See *ibid.* *ibid.*

|| See *ibid.* *ibid.*

¶ See *ibid.* folio 17.

"want.

"want encouragement." And Captain Brereton thanks him for paying the tribute so justly due to the brave lads whom he commanded: He hopes only it will not be imputed to him as a crime; will not be considered as a proof of frequent intoxication; that, in so short a time, he had so well disciplined so numerous a company, collected from every corner of the kingdom, that no men, in the judgment of Officers, could shew more order, or want less encouragement, in the day of battle.

Of Lieutenant Simpson.

Lieutenant Simpson deposes, that "from the 23d to the 27th every method was used to bring the Duke in her station *." "That the people were quartered:" "That he always understood Captain Brereton to be earnest that the Duke should be kept well up with the fleet, particularly when chasing the enemy †:" "That in his watch the Captain always came upon deck, and left it in charge with him to keep well up with the Vice Admiral." "He is clear that every endeavour has always been used to get the Duke up with the fleet ‡:"

Of the Master.

Mr. Henry Cooper, Master of the Duke, deposes, "that the Duke was perfectly agreeable to the trim given by the Master Builder:" "But that the Officers thinking she would go better more by the head §:" "And she being observed to be leewardly, and not to sail so fast as the other ships, Captain Brereton consulted the Master." And (in consequence of that consultation) "the iron ballast, shot, and some other things, excepting the guns, were moved abaft ¶." He deposes, that the Captain "was always desirous to keep the Duke well up with the fleet, particularly while chasing the enemy ¶." At first he "does not remember, that Captain Brereton caused more sail to be carried than the Master sometimes thought the masts would bear **." But the Captain referring to a particular time, he does recollect, "that he desired the Captain to order the top-gallant sails to be taken in, which had been set a very short time, because he thought the masts were in danger of going over the side." Upon the whole he concludes, "that there was not any thing in the power of Captain Brereton left undone to bring the ship properly into action ††."

Lieutenants Fortescue and Wolfeley.

Mr. Fortescue the fourth, and Mr. Wolfeley the fifth, Lieutenants of the Duke depose, "that Captain Brereton was at all times earnest in getting the Duke up with the fleet, and particularly when in chase of the enemy ‡‡:" "That in their respective watches Captain Brereton ordered them to keep as near as possible to Admiral Harland §§:" "to keep the Duke in her station |||:" "That nothing in his power was left undone to bring the ship properly into action" except, as Mr. Wolfeley thinks, "the moving of some of the guns forward ¶¶." And of the propriety of that measure Captain Brereton conceives himself to have been the proper judge.

* See Appendix (C.) folio 20.

† See *ibid.* *ibid.*

‡ See *ibid.* folio 21.

§ See *ibid.* folio 22.

|| See *ibid.* *ibid.*

¶ See *ibid.* *ibid.*

** See *ibid.* *ibid.*

†† See *ibid.* folio 23.

‡‡ See *ibid.* *ibid.*

§§ See *ibid.* *ibid.*

||| See *ibid.* folio 24.

¶¶ See *ibid.* *ibid.*

The evidence on this head is thus far consistent and connected, plain and decisive. What is there to oppose to it? In the first place, the evidence of Captain Adair of the *Marines*; and his evidence consists of an observation, a fact, and a supposition.

Opposed by the evidence of Captain Adair; which consists of an observation, a fact, and a supposition.

To begin with the observation. "He took notice on the 23d of July, when we first discovered the French fleet, that Captain Brereton appeared a little confused." This discovery he kept to himself for that day. But "he made the same remark the morning following;"—That is, he remarked on the 24th that Captain Brereton was a little confused; and, as a proof that he could not be mistaken, he tells us, "then, Captain Brereton was very much agitated *." And certainly to be very much agitated is to be a little confused. But this little confusion, and this very great agitation, had, by some strange miracle, escaped the notice of every eye but his own. No one of the other Officers had been able to discover it. So the witness himself tells us; for he adds—"That he then mentioned it to the Officers of the ship, that they might also observe it †." This part of Mr. Adair's evidence is not confirmed by one single witness. Much stress therefore it will not bear. It speaks, we see, of circumstances which, one should conceive, must have been visible to every one of the witnesses. A "little confusion," and "very great agitation," in the Commander of a ship, are circumstances too glaring to require extraordinary penetration to discover; too important to require extraordinary caution to entitle them to notice. And having been discovered and pointed out, it is scarcely in nature to suppose, that they could be forgotten by any Officer, or omitted in the relation which each of them gave of what he had seen and observed in the course of this transaction. Captain Adair then reduces us to this dilemma. Either we must suppose, that all the Officers of the ship have lost their eye-sight, and their memory; or that his observations were founded on false appearances.

An observation not observed by the former witnesses.

The next part of his evidence consists of a fact. He goes on to tell us, that "on the 24th and 25th, he applied to all the Officers, particularly the First Lieutenant, to desire they would prevail upon the Captain to get the ship more by the head, as it was their opinion she would sail the better for it ‡." It is not very usual for a Captain of *Marines* to interfere so much in the navigation of the ship. And neither Mr. Byard, nor the Master, in this instance, have given the honor of this manœuvre to the importunities of Captain Adair. But, whether in consequence of his importunities; or, as the Master says, in consequence of what he (the Master) advised, when his opinion was asked by, and not obtruded upon, Captain Brereton; "some tons of iron ballast were accordingly shifted forward;" so far, as to the fact, the Master and Captain Adair agree. Captain Adair adds; "She then carried her helm more weatherly." Of this the Master says nothing. Captain Adair goes on: "But the Captain refused to

A fact contradicted by the other witnesses.

* See Appendix (C.) folio 15.

† See *ibid.* *ibid.*

‡ See *ibid.* *ibid.*

" have

"have any of the after cannon and some shot moved forward, as they" (the Officers) desired*." Here Captain Adair is not only not supported, but he is positively contradicted by the other witnesses. Mr. Byard says every thing was done which the Officers advised, except removing the guns: and the Master declares, that in consequence of what passed between the Captain and himself, he moved the shot abaft, which Mr. Adair says the Captain refused to have moved.

Supposition
built on his
own observa-
tion.

Having favoured the Court with an observation which no other witness had observed, and with a fact, which two other witnesses contradict; Captain Adair concludes this part of his evidence by a supposition, built on his own observation. He was asked, "Whether, during the time the French fleet were in sight, Captain Brereton used his endeavours to encourage the ship's company†." The question is a plain one; it relates to a simple matter of fact; full as obvious, and as little liable to be mistaken, as any thing Captain Adair may understand by the "appearance" of a man. To this plain question however Captain Adair did not give a plain answer; but, referring to that observation, with which he set out, replied:—"He should think the contrary from his (Captain Brereton's) "appearance‡."

Evidence of
Lieut. Allen
does not con-
firm Adair's.

The observation of Captain Adair may, at first sight, seem to be confirmed by Lieutenant Allen. For he too says that "Captain Brereton seemed to be much agitated§." But he speaks of different times: Adair expressly mentioning the 23d and 24th; Allen speaking particularly of the 26th and 27th: Adair speaks of confusion and agitation previous, as well as subsequent, to the supposed intoxication; Allen speaks of agitation arising only from intoxication. This part of Allen's evidence relates therefore to the third article of the charge; and when we come to examine the evidence given on that head, the reader will see what weight is due to the evidence of Mr. Allen.

But does
confirm that
of the other
witnesses.

In the mean time, from whatever source Mr. Allen chuses this supposed agitation should appear to have sprung; to whatever height he chuses it should appear to have arisen, he yet, in express confirmation of the testimony of the other witnesses, declares that Captain Brereton was not only capable of doing, but actually did, his duty; for he deposes, "that Captain Brereton had at all times been earnest to keep the Duke well up with the fleet, particularly when in chase of the enemy§"—"That whenever it was his watch, Captain Brereton made it a constant rule to come upon deck before he went to rest, and direct him to keep as near Admiral Harland as possible¶;"—"That every method in use was practised to bring the Duke into better trim;—"That immediately upon seeing the French fleet, he ordered the ship to be cleared, and went round her himself to see that she was so**."

Thus far then Captain Brereton conceives that he was justified in

* See Appendix (C.) folio 15. † See *ibid.* *ibid.* ‡ See *ibid.* folio 16.
§ See *ibid.* folio 18. § See *ibid.* folio 19. ¶ See *ibid.* *ibid.* ** See *ibid.* *ibid.*
insisting

CAPTAIN BRERETON.

225

insisting before the Court, that there was no foundation for the charge of his having been incapable of doing his duty. Thus far it appears that he had executed his duty to the utmost of his power*. Thus far, he is confident, the reader will go hand in hand with the Court in acquitting him.

Captain Brereton persuades himself, that the evidence will appear as full and as conclusive in his favour on the second article of the charge; viz. That during the time of engaging he was incapable of doing his duty. Evidence on the second article.

Upon this head, Lieutenant Byard deposes, "That on the 27th, Of Lieut. Byard.
 "when the fleet tacked towards the French, he remarked to Captain
 "Brereton, that the topgallant sails were not set, upon which he very
 "cheerfully ordered them to be set†:" "though, so far as Mr.
 "Byard could then observe, no other ship, except the Queen, had her
 "topgallant sails set at that time‡." "This was about half past ten
 "o'clock." He adds—"We stood on, and as we came up, occa-
 "sionally fired between two of our ships, as we could get an oppor-
 "tunity. After we had passed the French line, Captain Brereton
 "gave orders to have every thing ready for going about, as soon as
 "we could clear our own ships; and the ship was tacked.¶" Thus
 far then Captain Brereton seems to have done his duty with cheerfulness, and given his orders with precision. The next circumstance which Mr. Byard relates will shew how perfectly recollected Captain Brereton must have been at that time. "But," says he, "on the signal
 "being made for the line of battle, Captain Brereton thought he
 "should bring to in the rear§." The professional reader will know that to have been the station of the Duke. Nor, if Sir Robert Harland had brought to, could there have been a doubt, that Captain Brereton should have brought to in the rear. But Sir Robert Harland continuing to stand on toward the French, Captain Brereton's situation became therefore difficult. Unwilling to trust entirely to his own judgment, he, as Mr. Byard informs us, "sent for his Officers:" and "mentioned to them" what he thought should be done in consequence of the signal of the Commander in Chief. But Mr. Byard "observed
 "to him, that as Sir Robert Harland was standing on towards the
 "French fleet, and the Duke not damaged, it would be proper
 "to follow Sir Robert with all the sail they could bear**." Having the sanction of this advice, Captain Brereton pushed on to support Admiral Harland, and got between the Queen and the enemy's line††. Mr. Byard being afterwards asked, whether "he did not
 "observe some ships of our fleet to leeward of the Duke, and at
 "some distance, as she passed by the French, when upon her star-
 "board tack;" says, "he believes there was one or two of our
 "ships on the larboard quarter of the Duke, though he cannot say

* See Appendix (C.) folio 27. † See *ibid.* folio 16. ‡ See *ibid.* folio 17.
 § See *ibid.* folio 16, 17. ¶ See *ibid.* folio 17. ** See *ibid.* *ibid.* †† See *ibid.* folio 14.

E

" what

" what ships they were : but thinks the Duke preserved that distance " till she had passed the French line ; " is positive " that those ships " did not get nearer to the Admiral and to the French fleet, than the " Duke ; and that the Duke had all the sails out that she could " set*."

Of Mr. Cooper,
Master.

Neither Mr. Allen, nor Mr. Simpson could, from their stations, have an opportunity of seeing Captain Brereton during the engagement. But the Master tells us, that " during the action he was by " the Captain upon the quarter-deck." " That Captain Brereton " wished several times that he could have joined in the action, and de- " sired they might tack as soon as it could be done with safety."— He explains what he means by " safety ; " adding, " that the Duke " was then prevented from tacking by the ships" (meaning English ships) " round her : " but adds, that " as soon as we were clear of " them, the ship was put about ; and we proceeded after Admiral " Harland with all the sail we could possibly carry†."

Of Messrs.
Yelland and
Hewett.

Mr. Yelland and Mr. Hewett were Midshipmen of the Duke. During the action they were stationed on the quarter-deck, for the purpose of passing the word. Both depose, that " when the English " were drawing up with the French fleet on the 27th of July, Cap- " tain Brereton gave them orders to go down to the Lieutenants upon " the gun-decks, and desire that they would be very careful to fire " clear of our own ships‡." " That these orders were given dis- " tinctly, resolutely, and without hesitation§." " That Captain " Brereton perceiving some of the shot of the Duke to fall near one " of our own ships, gave them directions to go down to the Lieu- " tenants, and tell them to cease firing till he sent them fresh " orders||."

Of Mr. Bul-
cock,

The evidence of these gentlemen is in all points confirmed by Mr. Bulcock, Assistant Clerk of the Duke, who was likewise stationed on the quarter-deck to pass the word. He was charged with the communication of the same orders ; and was moreover directed to " order " the Lieutenants, not to fire but when they were certain they were " within reach of the enemy." And this, like the other orders, " was given distinctly, resolutely, and without hesitation." " He " saw Captain Brereton encouraging the men to execute their duty." And he was certainly a competent witness : for he informs the Court that " he was employed with the Captain and the First Lieutenant in " watching and quartering the whole ship's company¶."

Upon this head too the evidence is consistent and connected : full and decisive. To it, nothing is opposed but an observation of Mr. Adair **, and a self-contradiction ** of the Master. And what are these when compared with the clear, circumstantial evidence of the First Lieutenant, who conversed with Captain Brereton, was consulted by him, gave his

* See Appendix (C.) folio 18.

† See *ibid.* folio 21.

‡ See *ibid.* folio 24.

§ See *ibid.* *ibid.*

|| See *ibid.* folio 24, 25.

¶ See *ibid.* folio 25.

** Both

which will be considered under the next article.

advice, saw that advice carried into execution? Of the Officers who during the whole time of the action received his orders, and delivered them to the respective Lieutenants? Thus far then it is proved, that Captain Brereton executed his duty: did all that could be done to bring his ship into action; to annoy the enemy; and assist the ships of his Majesty. Thus far then the public will go hand in hand with the Court in acquitting him.

In examining the evidence produced in support of the third article, we must change our method. The charge in the two first articles was negative—That Captain Brereton did not do his duty—he began therefore by examining the evidence offered to invalidate the charge; because that evidence tended to establish a positive fact—that he did do his duty.—But the third article contains a positive charge—that he was intoxicated—here then we shall begin by examining the evidence in support of the charge.

Evidence on
the third
Article.

The charge of intoxication relates to three distinct periods; the evening of the 26th before the action; the evening of the 27th after the action; and the day of the 27th during the action. We will first examine the evidence as to the two periods first mentioned; viz. the evenings of the 26th and 27th.

Which relates
to three
periods.

On this head Captain Adair deposes in these words: "On the 26th Captain Brereton supped in the ward-room, and was so very drunk that evening that I understood the Master put him to bed: the next day, the 27th, when the action began, between eleven and twelve o'clock in the forenoon, I observed he was then much confused from what had happened the preceding evening: he again supped with us in the ward-room on that night, after the action, and came upon deck about nine o'clock, when he staggered so much, that I took hold of him before the two Lieutenants who had the watch upon deck; and led him to his cabin, where I placed him upon his cot, with his back against the bulk-head: at this time he was so much in liquor, that he could scarcely speak."

Of Captain
Adair; as to
the evenings
of July 26th
and 27th.

Lieutenant Allen being desired to "inform the Court what observations he had made on Captain Brereton's behaviour from the 23d to the 27th, while we were in sight of the French fleet," without any preface or introduction; without specifying any particular part of this period, answers; "Captain Brereton seemed to be much agitated, and, in my opinion, intoxicated with liquor:" thus far one would suppose he meant to speak of the whole of the period from the 23d to the 27th inclusive. But then, as if recollecting himself, he descends to precise times; for he adds; "particularly on the 27th, when Captain Adair put him to bed." Then again he goes back to another and a prior period, adding, "the Master put him to bed on the evening before." He says—"the Master put him to bed, in consequence of his being drunk." And this, he says, "he saw." He says, "the Captain appeared to him to be drunk; and that it was in conse-

Of Lieute-
nant Allen;
as to the same
periods.

* See Appendix (C.) folio 15. † See *ibid.* folio 18. (C.) See *ibid.* folio 19.

"quence of his being in liquor that he was put to bed by Captain Adair on the night of the 27th, it being then about half past nine o'clock."

Inadmissibility of part of this evidence.

Before we examine the facts asserted in the evidence of these gentlemen, it may be necessary just to remark, that the Court did not pay all that attention to the nature of evidence, or to the discrimination of the admissible from the inadmissible, which other Courts are wont to do. For God forbid that Captain Brereton should suspect such honourable men of partiality. This he is sure it was not possible for them to feel. But certain it is, that Captain Adair was not stopt, was not reprov'd, when he said, he "understood the Master put him to bed on the 26th." Mr. Allen was not stopt, was not reprov'd, when he said, that "Captain Adair put him to bed on the 27th." Nay, though this be a circumstance which Allen did not pretend to have seen, the Court lead him to speak of it, as if he had seen it; and ask him why it happened &c. But for the present purpose, for the purpose of his own vindication in the eyes of the public, Captain Brereton is willing to wave the advantages he might take from this illegal admission of hearsay evidence, on a point in which the honour of an Officer was so materially concerned. For the present then let it pass with the other irregularities of the Court.

The evidence of the Master as to the 26th.

The fact of intoxication on the 26th rests entirely upon the truth of this other fact; viz. that on the evening of the 26th the Master put him to bed. For "that he understood the Master put him to bed," is the proof which Captain Adair assigns of intoxication on the 26th; "that he saw the Master put him to bed," is the proof Mr. Allen assigns. No man knows better than the Master, whether the fact was so or not. Does he say that he put him to bed? Hear his own words: "From the 23d to the 26th Captain Brereton frequently complained of being ill; and on the 26th, from the fatigue of clearing the ship, and preparing for action, he appeared to be very much indisposed. About eleven that night he desired to see the log-board, which I brought to him: he looked upon it, and said it was well; and soon after told me he was so much fatigued, that he wished he had a sail to lay down upon. I went and got his cot hung up, during which he had sent for his cloak, and gone into the quarter gallery with it round him. When his cot was hung up, I desired him to lay down, but he said he could never think of it, as the French were so near; upon this I took my leave and left him &c."

Contradicts the evidence of Adair and Allen as to the 26th.

Now then; let the reader compare this plain circumstantial evidence of the Master with the observations and remarks of Captain Adair, and with the assertions of Mr. Allen: and let him give his confidence there where he shall then think it ought to be given. Does the Master talk of disorder arising from drunkenness? He says that Captain Brereton was indisposed from fatigue: and tells you how he was fatigued. Does he say that he led him to his cabin? No such thing. Does he represent

CAPTAIN BRERETON.

him as being so confused as to want any one to lead him? He represents him to have asked for the log-board, to have examined it, and on examination to have been satisfied with it. Does he say he put him to bed? He says expressly, and in direct terms, the contrary. He says, he desired him to lay down; but that the Captain rejected the advice; not in a manner that implied confusion, or intoxication; but for reasons which it became a brave and a considerate Commander to assign—"He could not think of it, as the French were so near." Satisfied with this reason, the Master desisted; took his leave, and left him.

The reader sees then how the evidence of these two witnesses, respecting a fact which the one supposes, and the other positively swears, to have been done by the Master, is contradicted by the Master himself; after this it will be almost an insult to his understanding to suppose that he will lay any stress on any other part of the evidence of either. It is however but justice to observe, that Captain Adair flatly contradicts himself in the account he gives of Captain Brereton's intoxication on the evening of the 27th. The reader has heard him declare "Captain Brereton staggered so much, that I took hold of him and led him into his cabin." He has heard him declare, "Captain Brereton was then so drunk, that he could scarcely speak." He shall now hear this same Captain Adair, under the same bond of an oath, declare to the same Court, that Captain Brereton, so far from being drunk, appeared to him at that time to be ill. For being asked whether Captain Brereton "did not frequently refuse to leave the deck?" Whether "Captain Adair did not use many intreaties, saying, 'Sir, you must take rest, you are ill:'" Whether he "did not repeat these words several times?" What is his answer? "You told me you had a fever upon you, and a trembling all over; for which reason I advised you to lie or sit down, as I then thought that you was ill." It is rather wonderful that the Court did not wish to be informed, what new source of intelligence had been opened to this gentleman between the 27th and the day of enquiry. On the 27th he had supped in the same party, spent the evening in the same party, as Captain Brereton; walked with him upon deck; conversed with him; and then thought him ill. No after-discovery could entitle him to attribute that to intoxication, which his own senses told him at the time was the effect of illness.

But this is not the only contradiction which occurs in the evidence given as to this evening's transaction. Allen is contradicted by Adair; and both by Mr. Pearce. Lieutenant Allen says, as we have seen, that Captain Adair put Captain Brereton to bed. Captain Adair says, as we have seen, not that he put him to bed; but that he placed him upon—not in—his cot, with his back against the bulkhead. Now to set a man upright upon his cot, and to put him to bed, are very different things. But the truth is, that a witness, whose credit stands unimpeached, declares, that Captain Adair neither put him to bed, nor placed

Captain Adair's evidence as to the 27th at night contradicted by himself.

Allen's evidence contradicted by Adair; and both by Mr. Pearce.

him on his cot, nor led him to his cabin. For Mr. Pearce, Captain Brereton's steward, deposes, "that he attended the Captain every night, except the night of the 26th, before the action." "that in particular he attended him the night of the 27th, after the action." "that he went into the cabin with him on that night; and nobody else." "that having attended Captain Brereton to his cabin, he went for the log-book, which he received from the Master, and did not re-deliver it that night." "that when he left Captain Brereton, no one was with him in the cabin."

No proof of intoxication on the evenings either of the 26th or of the 27th.

Thus far then Captain Brereton will leave it to the candor of the public to determine whether there was any evidence of his being intoxicated on either of the two evenings. Nay, such is the opinion he yet entertains of the candor and the justice of the very Members who composed the Court, that he thinks he might safely appeal from their own hasty, to their own cooler, judgment: he is persuaded, that after this fair review of the evidence, they would not still persist in their opinion, that "on the night of the 26th, before the action, or on the night of the 27th, after the action, he was much intoxicated with liquor:" that they would not now adjudge him to be dismissed from the command of the Duke.

Evidence as to the time of the action.

But there is yet another period, the time of action, or rather of skirmish, at which it has been endeavoured to fix the charge, either of actual intoxication, or of confusion arising from preceding intoxication.

Of Captain Adair.

"On the 27th," says Captain Adair, "when the action began, I observed he was much confused from what had happened during the preceding evening †." "He was much more confused than usual, and I should judge that it proceeded partly from the effects of liquor ‡."

Of the Master.

The Master "does not think he was perfectly sober when the fleets engaged §."

The Master contradicted by himself.

The reader has already heard the Master give a circumstantial account of the conduct of Captain Brereton during the engagement. That account was given freely, at the outset of the business, when he was yet untutored, had not, to use a Master's phrase, found out the trim of things. In that account nothing of confusion was expressed, or implied, or insinuated. How the present assertion came to be dragged from him, we shall examine hereafter. For the present we may leave it to the reader to determine whether the former full and circumstantial account does not destroy the effect of this hasty answer to an improper question.

* There seems to have been a wish somewhere to confound what passed this night with what passed the night before. — But all the particulars are different. On the 26th Captain Brereton demanded the log-board: on the 27th the log-book. The log-board was brought by the Master, and taken away; as the service required it should be. The log-book was sent by the Master, and left all night; as the service allowed it to be.

† See Appendix (C.) folio 15. § See *ibid.* folio 16. § See *ibid.* folio 22.

After

After what has already been remarked upon the other parts of the evidence by Captain Adair, no answer seems necessary to his observation. If therefore what he deposes be unsupported by other evidence, it can have but little weight; if it be contradicted by other evidence, it will have none at all. The reader has already seen, that Messieurs Yelland, Hewett, Bulcock, and Beach, all stationed on the quarter-deck for the purpose of passing the word; all receiving orders from Captain Brereton during the whole time of the engagement; have deposed, that those orders were given distinctly, resolutely, and without hesitation. Such evidence from any one of these Officers would have been more than sufficient to annihilate the observation of Captain Adair, who is eternally moving in a circle; attempting to prove that Captain Brereton must have been confused on the 27th, because he was intoxicated on the 26th; and must have been intoxicated on the 26th, because he was confused on the 27th. But these gentlemen go farther. The questions are expressly put to them by Captain Brereton: "Did you at that, or at any other time, while I was on board the Duke, see me in liquor? Did you perceive me in any confusion, that might give you reason to suppose that I was in liquor?" The answers to these questions are direct and pointed: "No:" "We did not:" "We never did:" "Far from it:" "We saw you encouraging the men to do their duty*."

And both by Messrs. Yelland, Hewett, Bulcock, and Beach.

Whenever the evidence who are to support the charge of intoxication are fixed to a certain time, the detection, we see, is easy. Either they contradict themselves, or they are contradicted by others; or what they say is totally destroyed by circumstantial details, either of acts done, or of orders given, by Captain Brereton, which prove beyond a doubt his recollection and presence of mind.

Intoxication not proved at any given time.

But there was another circumstance upon which much stress seems to have been laid; which certainly did weigh with the Court; which possibly may weigh with the public: which, beheld in one point of view, implies something more blameable than a single act of intoxication, ever so clearly proved; which, beheld in another point of view, may serve as a clue to the reader, and direct him, perhaps, to the motives which gave rise to the first reports, and influenced some of the actors in this strange business. Consultations, the Court was informed, were held among the Officers; who were fearful that his Majesty's service might suffer from the behaviour of Captain Brereton. They do not go so far as to say that measures were actually concerted, but they do say that it was deliberated whether measures should not be taken, for confining his person, and depriving him of his command.

Consultations of the Officers supposed to be holden in consequence of Captain Brereton's behaviour.

This part of the evidence demands the most minute, and most severe, investigation. And Captain Brereton hopes he shall be able to make it, without conveying any charge or imputation on the conduct of the Court.

This evidence must be severely examined.

* See Appendix (C.) folio 24, 25.

Mr.

Evidence of
Lieutenant
Byard.

Mr. Byard is the first Officer who mentions this circumstance. Speaking of the time when the order was given to stand after Sir Robert Harland, he says, "It was then observed by the Officers, that Captain Brereton went into his cabin and drank a tumbler of grog; and they desired that I would mention to him the impropriety of his doing so at a time when it might make him incapable of doing his duty, and commanding his ship: I declined doing it then, hoping that the seeming confusion that appeared upon him was owing to his indisposition, as I had remarked him at all other times, to be the most sober, regular man I had ever the pleasure to sail with*." Afterwards Mr. Byard fixes this conversation "to half past two in the afternoon†" And, he says, "he never saw him the worse for liquor, but on this day‡." Being again called before the Court, Mr. Byard, was told by the Court what the other witnesses had deposed; the question being prefaced, and stated, in the following words: "It has appeared by evidence given to this Court, that Captain Brereton's conduct gave occasion to some of your brother Officers to desire that you would attend to his behaviour, that no detriment might happen to his Majesty's service from his misconduct, and, if you should see occasion, to put him to his cabin, and take the command of the ship: Was this mentioned to you by them?" Mr. Byard's answer is conceived in these words: "It was mentioned to me by them, that if, from Captain Brereton's conduct, there should be reason to apprehend his drawing back, and not bringing the ship into action, should there be a probability of our being again engaged, they would look to me to take charge of the ship. And I told them, that when I saw it necessary, I should undoubtedly do so: but then I saw no occasion for it§."

Of Lieutenant
Allen.

Mr. Allen being asked whether "he had joined in advising Mr. Byard to remind the Captain, that by his drinking, he might render himself unfit for his command;" tells the Court "that he did; that it was on the afternoon of the 27th of July, after the firing was over;" that this was done because "they saw him drink grog frequently||." A little after he is asked by the Court "Whether this conduct in Captain Brereton alarmed him and the other Officers of the ship, so as to make them apprehend it would be dangerous to his Majesty's service, and render him unfit to command the ship." He replies: "It did: and Mr. Byard was desired, if there should be a probability of the ship coming again into action, to be very attentive to Captain Brereton's behaviour, and, should he suspect that he would act improperly, to put him to his cabin, and take the command of the ship." And he adds; "Mr. Byard, who acted as First Lieutenant, was present."

* See Appendix (C.) folio 17.
§ See ibid. folio 23.

† See ibid. ibid.
|| See ibid. folio 19,

‡ See ibid. ibid.

Captain Brereton very readily allows, that cases may arise, where the good of his Majesty's service may justify the Officers of a ship in confining the Captain, and depriving him of his command. But he hopes at the same time it will not be denied, that cases of this sort do not often arise. Some meaning, he presumes, must be attributed, some force allowed, to the terms of the articles and orders, which the wisdom of Parliament has established, and directed to be "duly observed, and put in execution*." It is possible, at least, that assemblies may be mutinous: It is possible, at least, that words may be seditious and mutinous: It is possible, that an assembly, convened for the purpose of devising means to confine a Commander and deprive him of his command, may come within the idea which the legislature had formed to itself, when it denounced the pain of death upon "persons making any mutinous assembly upon any pretence whatever." It is possible, that, under certain circumstances, the person who proposes to confine a Commander, may come within the description of a person "uttering words of sedition and mutiny:" It is possible, that a person present at such discourse, and concealing it, may come within the description of a person "concealing any traitorous or mutinous practice or design." Captain Brereton thinks he may go one step farther. He thinks he may venture to say, that in general, in the ordinary course of things, assemblies convened for such a purpose, would be mutinous assemblies: persons making such proposals, would be uttering words of sedition and mutiny: persons concealing such discourses, would be concealing traitorous or mutinous practices or designs.

Cases do not often arise where Officers may be justified in confining the Captain and depriving him of his command.

Captain Brereton persuades himself, that he shall not be thought to draw the line of subordination within too narrow bounds, if he ventures

Circumstances under which it may be lawful.

* See the articles established by 22 Geo. II. c. 33.

Article XIX.

If any person in or belonging to the fleet, shall make, or endeavour to make, any mutinous assembly upon any pretence whatsoever, every person offending herein, and being convicted thereof by the sentence of the Court Martial, shall suffer death: And if any person in or belonging to the fleet, shall utter any words of sedition or mutiny, he shall suffer death, or such other punishment as a Court Martial shall deem him to deserve. And if any Officer, mariner, or soldier, in or belonging to the fleet, shall behave himself with contempt to his superior Officer, such superior Officer being in the execution of his office, he shall be punished according to the nature of his offence by the judgment of a Court Martial.

Article XX.

If any person in the fleet shall conceal any traitorous or mutinous practice or design, being convicted thereof by the sentence of a Court Martial, he shall suffer death, or such other punishment as a Court Martial shall think fit; and if any person in or belonging to the fleet, shall conceal any traitorous or mutinous words, spoken by any, to the prejudice of his Majesty or government; or any words, practice, or design, tending to the hindrance of the service, and shall not forthwith reveal the same to the Commanding Officer; or being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same, he shall be punished as a Court Martial shall think he deserves.

to lay it down as a rule, essential to the discipline of the fleet, that to justify such assemblies, such consultations and discourses; to purify them from the guilt attributed, and to exempt them from the punishment due, to mutiny and sedition, the three following circumstances must all concur:

I. There must be unequivocal proofs of cowardice, disaffection, or utter incapacity, on the part of the Commander.

II. These proofs must not only be unequivocal, but notorious to, at least, all the chief Officers of the ship; who must all be present at such consultations; all privy to the measures concerted thereat.

III. The ship must be in such a situation, that there is no possibility of applying for a legal and regular dismissal, or suspension, of the Captain from his command.

If on examination these circumstances appear, the sentence of the Court too mild.

When one or two of the witnesses confessed a conduct, which, in the ordinary course of things, is highly criminal; which it requires the concurrence of so many circumstances to justify; Captain Brereton conceives it to have been the duty of the Court to have investigated this point with the most scrupulous attention; to have enquired with the minutest exactness, whether these circumstances did, in the present case, concur. If, upon such enquiry and investigation, they were found to concur, Captain Brereton is ready to allow that the evidence of such consultations, so justified, ought to have weighed with the Court; ought now to weigh with the public. He is ready to allow that the sentence of the Court, so far from being arraigned for excessive severity, would, in such a case, deserve the blame of excessive mildness; of almost a criminal lenity: That, instead of dismissing him from the command of any given ship, they ought to have dismissed him from the service of the King.

If not, the evidence of men who held such consultations should have been rejected.

But if, on the contrary, instead of the concurrence of all these circumstances, no one of them be found to exist, Captain Brereton conceives it to have been the duty of the Court totally to have rejected the evidence of men, who, accusing themselves of a crime of so high a nature, might justly be suspected to have been under undue influence; to have been biassed in their evidence by the fear of seeing their own conduct submitted to enquiry, and by the hope, that the sacrifice of their Commander might screen themselves from punishment.

Unequivocal proofs of cowardice, disaffection, or incapacity, must be acts or habits.

Let us see then whether any, and which, of these circumstances concur in the present case. Is there any thing which can be called an unequivocal proof of cowardice, disaffection, or utter incapacity, on the part of Captain Brereton? Such a proof must arise either from some clear and positive act of cowardice, or disaffection, or ignorance; or from repeated acts of backwardness, or negligence, which, taken singly, might perhaps be insufficient, but which from their repetition imply a habit sufficient, to establish the charge of incapacity.

Mr. Byard hints nothing of this habit: of repeated acts of backwardness, or negligence*. Mr. Byard expressly says, that from the 23d to the 27th "every means was used to bring the Duke into her station†." He as expressly says "that he never saw Captain Brereton "the worse for liquor but on the 27th‡." It was then, he tells us, and from that single act of intoxication, real or supposed, that occasion was taken to make the proposals, which he recites.

Byard does not speak of habits, but rests the proof of incapacity on one single act of intoxication.

Nor does Mr. Allen say any thing of repeated acts of backwardness or negligence. On the contrary, he expressly declares, "that every "method in practice was used to put the ship into better trim;" "that "Captain Brereton was earnest to keep the Duke up with the fleet;" "was attentive to see her cleared for action§:" As expressly he declares, "that it was on the afternoon of the 27th, after the firing had "ceased, that he joined in this advice to Mr. Byard." And that he was "induced so to do from having seen Captain Brereton drink grog "frequently||." These two witnesses then, the only witnesses who speak to these consultations, as having been present at them, declare the inducement to them to have been the intoxication of Captain Brereton on the 27th; an intoxication which, to justify such consultations, must have been carried to such an height as to render him utterly incapable of discharging his duty.

Nor does Mr. Allen speak of such habits; but only of intoxication.

Does Mr. Byard pretend that he had any unequivocal proof, that Captain Brereton was to any degree intoxicated on the 27th, or on any other day? Certainly not. He declares "that he never saw him the "worse for liquor, but on that day¶." On that day he does not positively say that he saw him intoxicated, or (to use his own phrase) the worse for liquor. He says only "he really believed that he was so." And why does he believe it? "Because he saw him a little confused." "This confusion he is afraid, he apprehends, he really believes, proceeded from drinking a glass of grog before dinner; from having "drank too much**." This confusion after all is not unequivocal: for in the outset Mr. Byard doubts of it; speaks of it in qualified terms; as of a "*seeming confusion*††." But allowing, for the sake of argument, that some little confusion had appeared, was there no other cause to which that confusion might be attributed? Was there no other cause to which Mr. Byard did, at the time, attribute it? Let Mr. Byard answer in his own words—"A few days before we engaged, a day or "two after the appearance of the French, Captain Brereton told me "that he found himself very unwell:" "And it appeared evidently "that he was indisposed; for very often he was not able to stand upon

Byard does not prove this act of intoxication.

* Mr. Adair is the only witness who seems to have chosen this ground: With what effect the reader has seen, (Case, folio 23—25). But he says nothing of these consultations. It does not appear from any thing which he said in open Court, before all the members of the Court, that he was present at, privy to, or in any manner informed of, these consultations.

† See Appendix (C.) folio 17.

‡ See *ibid.* *ibid.*

§ See *ibid.* folio 19.

|| See *ibid.* *ibid.* Mr. Allen is here speaking of what passed on the 27th.

¶ See *ibid.* folio 17.

** See *ibid.* *ibid.*

†† See *ibid.* *ibid.*

"the deck, but was obliged to go and throw himself down on his bed. At the intermediate times he gave orders to have every thing in readiness for action*." "He gave every order that his state of sickness would admit†." And speaking of the 27th in particular, he gives as a reason why he declined to mention to Captain Brereton the impropriety of his drinking, that "he hoped the seeming confusion that appeared upon him was owing to his indisposition, as he had remarked him, at all other times, to be the most sober, regular man he had ever sailed with‡." What then can have tempted Mr. Byard to give up his hopes, or to alter his opinion? They were founded, we see, on the general tenor of Captain Brereton's conduct; they were confirmed by the then state of his health. Why then should Mr. Byard, at an after period, attribute to intoxication what, at the time, and for such good reasons, he attributed to illness?—"Because he, on that day, had drank a glass of grog before dinner." Did Mr. Byard see him drink grog? No. He does not speak from his own observation: He speaks from the observation of Officers: "For they observed that Captain Brereton went into his cabin, and drank a tumbler of grog." Did they accompany the Captain to his cabin? Did they taste, or smell, or see the liquor? Had they any proofs that it was grog? No. Hear then what Mr. Kentish deposes; "On Sunday the 26th Captain Brereton complained to me that he had got a violent cold, and found himself feverish: finding him feverish, I advised him to lose a little blood, which he refused: I made him some cooling draughts and powders, which he took every morning, but he still continued to complain of being much indisposed." Now might it not very well happen, from the general tenor of Captain Brereton's conduct, and from the then state of his health would not any candid man conclude, that what was mistaken for grog was in fact these cooling draughts and powders, which he was ordered to take every morning; which therefore, in pursuance of this prescription, he was to take at the very time when it was observed that he went into his cabin to drink? Would not a candid man think this conclusion yet more natural, almost unavoidable, when he heard the same Surgeon declare upon oath, that "he never saw Captain Brereton in liquor at any time since he was on board the Duke§?" A circumstance which could scarcely have escaped him had it happened: When he hears him add, that he messed in the ward-room, yet does "not remember Captain Brereton's spending the evening there on the 26th||." Which yet he must have remembered, had Captain Brereton, in contradiction to the general tenor of his conduct, been so intoxicated on

* See Appendix (C.) folio 16.

† See *ibid.* folio 17.

‡ See *ibid.* *ibid.* The reader will please to observe, that the indisposition of Captain Brereton was not a seeming indisposition. It was known to almost every Officer in the ship. Captain Adair believed it at the time; Mr. Byard knew it; Mr. Simpson heard him frequently complain of it; so had Mr. Fortescue; and Mr. Kentish, the Surgeon, prescribed for it.

§ See *ibid.* folio 26.

|| See *ibid.* *ibid.*

that evening, and in consequence of spending that evening in the ward-room, as to stand in need of an assistant to lead him to his cabin. What proof, then, has Mr. Byard, that the liquor which the Captain was observed to drink, was grog? A seeming confusion. What proof that this seeming was a real confusion? He drank grog. But supposing for a moment, though by no means allowing, that Captain Brereton was a little confused, not quite so steady as on other occasions; supposing his confusion to have arisen not purely and simply from indisposition, but partly too from liquor, of which, "in his then state of health, a less quantity than usual might affect him*." Does Mr. Byard pretend that this confusion was such as to cause any detriment to his Majesty's service; or to justify the Officers in calling upon him to take the command of the ship; or even in advising him to warn the Captain not to drink? So far from it, Mr. Byard over and over again declares, that nothing was left undone which ought to have been done: that no endeavours could have brought the Duke into closer action. He declares "that he saw no occasion to take charge of the ship†." He did not think himself justified in warning the Captain not to drink, because, at that time, he saw nothing but a seeming confusion, and that he hoped proceeded from indisposition.

Has Mr. Allen been more fortunate? Has he produced these unequivocal proofs of such incapacity on the part of Captain Brereton, as to justify these consultations. In these consultations he joined, so he tells us: And he tells us his inducement: He does not rely upon what others observed; but upon what he, as well as others, saw. "We," says he, speaking of other Officers whom he does not name, "We" "saw" "him drink grog frequently." He is speaking of the time of action; for the advice was given immediately after the firing was over, and while the Duke was standing on after Sir Robert Harland: That we learn from Mr. Byard: And the inducement both Mr. Allen and Mr. Byard represent to have been something observed immediately before. To this gentleman we need not put the same questions as we put to the last witness. His answer to one short question of the Court has destroyed his evidence. Having mentioned the advice in which he joined; the time of giving it; the inducement to give it; namely—"We saw him drink grog frequently"—he is asked, "where he was quartered?" To which he coolly replies "Upon the lower gun-deck‡." To the evidence of a man who from the lower gun-deck

Nor does Mr. Allen.

can

* See the second examination of Mr. Kentish—Appendix (C.) folio 27.

† See Appendix (C.) folio 23.

‡ See *ibid.* folio 19. This answer so flatly contradicting what he had just asserted, it is wonderful that the Court should not express some surprise, hint some little doubt as to the credibility of this witness. Far from it. They express no surprise, hint no doubt, take no notice of the contradiction; they proceed, as if all was consistent, as if his evidence as to what he asserted to have seen, was rendered more credible by his evidence as to the place of his being quartered. What at the bar is called a leading question, is put to him. This conduct—that is, the frequent drinking of grog—is taken for proved; and he is questioned as to the effects it had upon him and the other Officers.

We have before heard Mr. Allen swear that he saw the Master do what the Master swears

The proof of intoxication, supposed by Mr. Byard and Mr. Allen, not seen by the other Officers.

No other Officers present at the consultation.

can pretend to see what the Captain drinks in his cabin, no answer can be necessary, because no credit can be given.

But had the proofs of utter incapacity appeared ever so unequivocal to Mr. Byard and Mr. Allen, that would not have been enough to justify these consultations, unless the same proofs had been notorious to at least the principal Officers of the ship. The incapacity, we have seen, has been attributed to actual intoxication on the morning or afternoon, previous at least to the evening, of the 27th: and the proof of that intoxication rests upon the proof of Captain Brereton's going into his cabin to drink grog*. This Mr. Byard does not pretend to have seen: this Mr. Allen has sworn that he did see; and that it was not possible for him to see. Who then are the other Officers that observed this circumstance? Captain Adair, observant as he was of the conduct of Captain Brereton, is totally silent about it. Lieutenant Simpson, from his situation could not have seen it. Nor, when he came upon deck immediately after the action, did he see any effects of it: for he swears that "he saw nothing unusual in the behaviour of Captain Brereton †." The Master, who was by the Captain, on the quarter-deck, during the action, saw nothing of it. Lieutenants Fortescue and Wolfeley, are silent about it. Neither Messieurs Yelland, nor Hewett, nor Bulcock, nor Beach, who were continually about the Captain, saw it.

As the act which is said to have given rise to these consultations, and discourses, was not known to any of the Officers, save only to Messieurs Byard and Allen, so neither does the course of evidence furnish the minutest proof, that any other Officer was present at such consultations; or privy to any measures concerted thereat. Lieutenant Byard indeed talks of "the Officers," of "some of his brother Officers." Mr. Allen too seems to speak of "his brother Officers." Who were they? Was the Officer next in command, was Lieutenant Simpson, of the number? "He had heard say that Captain Brereton was a little groggy, but knew nothing of it." "He knew nothing of the conversation that passed in the ward-room for the First Lieutenant to take the command of the ship:" "nor ever perceived any thing in Captain Brereton's behaviour that could give any occasion for the conversation that passed in the ward-room of his not being able to do his duty ‡." Was the Master present at these consultations?

Was

swears he never did. We now hear him swearing, that he saw what at the same time he swears he could not see. He swears too, that "having the watch on the 27th at night, Captain Brereton gave him no orders:" though in a moment afterwards he swears, that "whenever it was his watch," Captain Brereton did give him particular orders.

* We have examined and refuted the evidence given in support of the charge of intoxication at every other period, or drawn from any other circumstance.

† See Appendix (C.) folio 20.

‡ He adds—"excepting that night"—How that exception comes to have been made we shall see by and by; for the present, it is sufficient to observe, that the conversation was prior to the time excepted: and that what happened or appeared, at that time, could not give occasion to preceding discourses. Even on that night he does not pretend

Was he privy to the measures concerted thereat? "He knew nothing, at the time, of any intention of putting the Captain to his cabin, and taking the command of the ship from him; though he has since heard that it was intended." "He never saw any thing in Captain Brereton's conduct which could afford a reason for such conversation." "He knew nothing that the Officers desired the First Lieutenant would remind Captain Brereton, that his drinking so much would render him incapable of doing his duty †." Does it appear, from the evidence before the Court, that the two other Lieutenants, Fortescue or Wolseley, were present at these consultations, or privy to any measures concerted thereat? Not one word do they say about it. Who then were the Officers to whom the proofs of incapacity were so notorious? Who, in consequence of these notorious, unequivocal, proofs of incapacity held these consultations, and concerted these measures? Lieutenants Byard and Allen. Who else? Lieutenants Allen and Byard. Does this account—let the candid reader determine—does this account represent the conduct of Officers, alarmed at the behaviour of their Captain, consulting how to ward off impending danger, attentive that no detriment may happen to his Majesty's service; or does it seem to represent the conduct of a seditious junto, of a mutinous faction, who having formed the design of confining their Commander, and seizing the ship: having found the execution of that design too dangerous; fearful that it may hereafter be discovered, endeavour to prevent a discovery by groundless accusations; and seek their own safety in the sacrifice of their Commander?

Two then of the circumstances which must concur to purify such consultations from the guilt attributed, and exempt them from the punishment due, to mutiny and sedition, are evidently wanting. How is it with the third? Was the ship in such a situation that there was no possibility of applying for a regular and legal dismissal, or suspension, of the Captain from his command? If there was such a possibility, though the proofs of incapacity had been ever so unequivocal; though they had been notorious to every Officer of the ship; still these consultations would have been seditious, these proposals mutinous. For what are the proposals? To put the Captain to his cabin: to take the command of the ship. When were they to be put in execution? Not

The Officers
should have
applied to the
Admiral.

tend to say, that Captain Brereton was incapable of doing his duty: much less does he pretend to prove an incapacity proceeding from intoxication. For he says "he often heard Captain Brereton complain of being ill; but never saw him drunk." "Some orders were that night given very confusedly; but whether from being in liquor, or occasioned by ill-health, he cannot say." "Had the same orders, or words, come from any other man, he should have thought they might have proceeded from being in liquor, or from being indisposed through fatigue." "He always considered Captain Brereton as a sober man:" "nor during the period of time mentioned"—from the 23d to the 27th inclusive—"did he ever observe that he drank more than usual." See Appendix (C.) folio 20, 21.

* See Appendix (C.) folio 22. As to the last particular, the Master changes his mind. How that happened we shall see hereafter.

† See *ibid.* *ibid.*

instantaneously;

instantaneously; during the moment of the then action; but at some future, some uncertain, period. On what grounds were they made? Not because any thing had then been neglected; not because the ship had then been improperly conducted: but because in some future action it might please the First Lieutenant to suspect that the ship would be improperly conducted. What was the situation of the ship? Was she a single ship, belonging to no squadron; under the command of no superior Officer? No! she was part of a fleet, in which three flags were hoisted. In such a situation, where access to regular and legal authority was so easy, shall the suggestions of one, or the suspicions of another Lieutenant, authorize them to arrogate the power of the Commander in Chief; to confine their Captain, to take the command of the ship? "The person who makes, or endeavours to make, any mutinous assembly upon any pretence whatever, shall suffer death." So says the Legislature. "Upon any pretence but suspicion." So say Messrs. Byard and Allen.

Such evidence ought not to have been admitted by the Court.

The candid reader will feel surprize, the professional reader will be struck with horror, when he sees a Court Martial, judges not only of the life, but—what is infinitely dearer to the possessor, infinitely more precious to the public—of the honour of an Officer, admit such evidence without reproof. What weight could be due to the evidence of men, who declared upon oath that they had been guilty of acts to which the law has affixed the penalty of death; had held mutinous assemblies; uttered words of sedition and mutiny; concealed traitorous and mutinous practices and designs! What Court but this would have suffered such evidence to be given; injurious to the party and dangerous to the witness!

Especially when the supposed misbehaviour was so long concealed, and so irregularly charged.

But there was yet another circumstance to which the Court could be no strangers; to which Captain Brereton, in his address, particularly directed their attention. These Officers pretend that Captain Brereton's misconduct was so alarming, as to impel them to do in the midst of a fleet what nothing but the extremest necessity can justify even in a ship sailing single and by itself. How do they conduct themselves afterwards? Do they seize the first moment of laying their complaints before the Admiral? No. They suffer the ship to return under the command of the same Captain; to continue three whole weeks in harbour under the command of the same Captain; to put to sea again in quest of the enemy under the command of the same Captain. And even then do not prefer any specific complaint in a regular, open, manly way to the Commander in Chief; but whisper a vague indeterminate charge in the ear of a private Captain of the fleet. To hear witnesses like these talk of apprehensions of public danger, of fears for the service of the King, would excite our laughter, if laughter were not suppressed by indignation. Where was their apprehension of public danger, where their fear for the service of the King, during the long interval between the day of action and the day of resailing? Could public danger be no otherwise avoided than by private mutiny? Could the service of the King be no otherwise secured than by the ruin of discipline? Or was it in the sight of an enemy alone that a Court would

would have leisure to examine, and patience to discuss the grounds of accusation and the merits of defence.

In examining the evidence Captain Brereton has hitherto proceeded on the supposition, that it was freely given; that the witnesses spoke as they felt; unled, uninfluenced, unconfounded by the Court. He will not take upon him to say that in this he has been mistaken: but this he will venture to do: he will beg the reader to cast his eye once more on that evidence; to run it over again with the sole view of examining, whether it appears to him, that any one of the witnesses did voluntarily, and of his own free accord, depose, that the conduct of Captain Brereton gave him any just cause of alarm for his Majesty's service? Whether any thing like this is deposed by any witness, till the idea is previously suggested by some question of the Court? Whether the questions of the Court are not—by mistake, no doubt, and through inattention—so unfortunately worded, as to convey to the witness an idea that the Court expected such cause of alarm to be proved? Whether this unfortunate turn of the questions, joined to that other unfortunate circumstance—seeing the prosecutor in one of the Members of the Court—would not, though without any intention, produce on the minds of some of the witnesses a part at least of the effect, which the exhortation of Laméla was intended to produce on the mind of the good host of Xelva*?

With this view then let us once more examine the evidence of Lieutenant Byard, as he delivered it at first. After having remarked how chearfully Captain Brereton ordered the topgallant sails to be set in the beginning of the chase, and the ship to stand after Sir Robert Harland toward the close of it; he tells the Court, that it was observed by the Officers—that is not by himself, but by some Officers whom he does not name—that Captain Brereton went into his cabin, and drank a tumbler of grog. But so far was Mr. Byard at that time, and on hearing that observation, from feeling any alarm for his Majesty's service, that he attributes to indisposition the seeming confusion which appeared upon the Captain. Nay this appearance of confusion seems to have been pointed out to him by others, and not observed by himself. And he positively declares that this confusion, whether seeming or real, and proceeding from whatever cause it might, had not hindered Captain Brereton from doing every thing that could be done for the service of his Majesty.

The next witness who speaks to this point is Lieutenant Allen. The Court asked him “Whether he joined in advising Mr. Byard to remind the Captain, that by drinking he might render himself unfit for his command.” The reader should know that it is the inviolable practice of Courts-Martial, as in fact it ought to be of all Courts, to examine the witnesses separately, not in the presence of each

* “Mon ami, reprit Laméla, Vous oubliez qu'il ne faut point dans votre interrogatoire excuser Samuel Simon. Vous ne devez dire que des choses qui soient contre lui, et pas un mot en sa faveur.”

Histoire de Gil Blas de Santilane.

others. The use of this precaution is evident. It prevents, or at least renders it more easy to detect, malicious combinations. But this salutary effect was, in this instance, destroyed by the manner of wording the question of the Court. The question, as it is worded, not only informs the witness of what another witness had deposed, but implies the entire credit given by the Court to that deposition. It was therefore more repugnant to the practice of Courts-Martial to have this information so conveyed, than it would have been to suffer the second witness to have learned it from the mouth of the first. To this question so put, Mr. Allen dryly answers "He did." He is then questioned as to his inducement, which he declares to have been the having seen Captain Brereton drink grog frequently. He is then very pertinently asked, where he was then stationed*? to which, without hesitation, and probably without recollection, he replies, "Upon the lower gun-deck." In any other Court of criminal jurisdiction, such a witness, it is conceived, would have been dismissed with a reprimand, if not committed by the Court. But as the witness stood unabashed, the Court was unmoved by this gross and palpable contradiction. Had any farther advice been given to Mr. Byard, either by Mr. Allen, or by other Officers in his presence, it is scarcely possible that he could have omitted in his answer to the former question to state what that ulterior advice had been. But in that answer nothing more is insinuated, than what was directly pointed out in the terms of the question, and what, from the manner of putting the question, Mr. Allen was informed Mr. Byard had already deposed. This is the more remarkable as, at the outset of his evidence, and to a general question, Mr. Allen, like a school-boy repeating a lesson, tumbles upon one fact after another, without order or connection. But the Court very kindly assisted his memory; asking him, "Did this conduct in Captain Brereton alarm you and the other Officers of the ship, so as to make you apprehend that it would be dangerous to his Majesty's service, and render him unfit to command the ship?" What is meant by—this conduct?—That single act which the witness swore he saw, and which the Court, with a true, staunch, catholic faith, determined to believe that he did see, because he proved it to be impossible that he could see it. Why the Court should suppose Mr. Allen to have been more alarmed at this invisible conduct than he had stated; or why they should apply to him to know the degree of alarm with which it had filled other Officers, they best can tell. Thus reminded, however, of what he had either never known, or had now forgot, Mr. Allen, in his dry way, replied, "He did." There he paused. Recovering breath, he goes on to tell the Court that Mr. Byard had been desired, if there should be a probability of another action, and a suspicion of Captain Brereton's conduct, to put the Captain to his cabin, and take the command of the

* To take the minutes of a Court-Martial accurately, the Judge Advocate should distinguish by whom each question is put; whether by himself, by the defendant, or by any, and which, member of the Court.

ship. This too the Court received without any apparent disapprobation. Here then the young Officers, who formed the circle, were taught a lesson unknown to the naval code; here the listening crew were taught, on the authority of a Court-Martial, that subordination and discipline bow their stubborn necks at the feet of probability and suspicion; whose high behests may imprison the Captain, and, by parity of reasoning, every Officer of the ship, and confer the command on the carpenter or the cook; or on the first foremast man who chuses to step forth and seize it. The Court had talked of other Officers: as Mr. Allen had answered for their alarms, it would not have been amiss to have called on him for their names. But the Court was cautious; would not press unnecessary questions; and simply asked if Lieutenant Byard was present at a discourse, which the witness had sworn to have been addressed to Lieutenant Byard.

The evidence of Mr. Allen, as to these conversations, was not supported by the evidence of the other Officers. This is true. But no blame can be imputed to those who formed the interrogatories. No pains were spared; no art was omitted to extort such a confirmation from Lieutenant Simpson. Want of success does not always imply want of merit. No hackneyed Solicitor at the Old Bailey could have turned and winded more about him*. The Master too was put upon the rack. And, to a certain degree, the experiment succeeded. When, at the outset, he is asked, if he knew any thing of the intention of the Officers to put the Captain to his cabin, and to take the command of the ship from him; or of their desire, that the First Lieutenant would advise him not to drink: his answer is clear and precise—Not at the time; he had since heard of it.—Being asked; if he had seen any thing in Captain Brereton's conduct, that could afford a reason for such conversation: his answer is clear, precise, and full—"Never†."—But here the reader will observe, that these questions were put in a plain, simple way; without any preface; without any information, or innuendo of what other witnesses had said upon the matter. The mistake was seen. But it was now too late entirely to rectify it. What could be done was done. Plain, precise, and full, as were the answers of the Master, the questions are repeated. The Master catches his cue, and though he had not the complaisance to contradict himself as to the fact of not having been privy to such conversations, he was less scrupulous as to his opinion of the prudence or necessity of them.

Both Mr. Simpson and the Master having expressly declared that they had neither been privy to any of these consultations, nor observed any thing in Captain Brereton's conduct which could afford a reason for them, Mr. Allen's evidence began to totter. It was determined to give it such props as could be procured.

Of Lieut. Simpson, and the Master.

Attempt to support the evidence of Allen.

* The reader should peruse the whole of this examination. There was somewhere a strange passion for asking one man what another man did. They ask Lieutenant Simpson, whether Captain Brereton ever complained to the Surgeon. Excellent Judges!

† See Appendix (C.) folio 22.

By Mr. Byard, on his second examination.

To have proved from the mouths of the other Officers, that they had felt the same alarms at the conduct of Captain Brereton; that they had assisted at the councils, and concurred in the measures proposed, to obviate the ill consequences apprehended from that conduct would have been an effectual support. But the attempt was dangerous. It had not succeeded, we see, either with Lieutenant Simpson, or the Master. It was therefore determined again to call Mr. Byard before the Court; to give him proper instructions; to put proper words into his mouth; and then to ask him a proper question. Mr. Byard was again called before the Court: And he was told: "It has appeared by evidence given to this Court, that Captain Brereton's conduct gave occasion to some of your brother Officers to desire that you would attend to his behaviour, that no detriment might happen to his Majesty's service from his misconduct, and, if you should see sufficient reason, to put him to his cabin, and take the command of the ship*." We need not here repeat what has before been said of the indecency of stating to one witness what had been given in evidence by another. The charge here is of a higher nature. Not that the evidence was stated, but that it was grossly mistated. It had not appeared by evidence that Captain Brereton's conduct had given occasion for such advice: It had not appeared by evidence that such advice had been given to Mr. Byard by some of his brother Officers. Three Officers had been examined, all of whom must have known the occasion, had it existed; and ought to have known the fact, had it been true. Allen is the only one who believes the occasion, and avers the fact. The two others positively deny their knowledge either of the fact, or the occasion. Because Mr. Allen, in the same breath, says Yes and No: I did, and I did not: is he therefore become two men, or many men? But this is not all. Since the evidence was taken from the deposition of Allen alone, why not keep to his words? Why soften those words? Was it left Mr. Byard should reject with horror all knowledge of advice so unworthy to be given, so unfit to be taken, by an Officer? Or, in the dictionary of this Court, are "suspicions," and "sufficient reasons," synonymous terms? And yet after all, though Mr. Byard was too polite to contradict what he was informed had been given in evidence, yet he was too honest not to add—that he saw no occasion for the advice. And had he been asked, as he ought to have been asked, who the Officers were, he would as honestly have owned, that Mr. Allen was the only one of his brother Officers who had given such advice.

Recapitulation.

Here then Captain Brereton rests his defence. He flatters himself that he has fulfilled the promise, with which he set out. He has shewn, that the Duke was equipped with uncommon dispatch; that ex-

* See Appendix (C.) folio 23.

traordinary exertions were made to hasten her junction with the Admiral; that during the chase and attack every thing was done that could be done to bring her into close action. He has shewn, that during the three weeks that the fleet remained in harbour, no complaint was lodged against him, no mark of disapprobation shewn, either by his Admirals, by the Captains, or by his own Officers. He has shewn, that near a month had elapsed after the action; that the fleet was refitted, actually sailed on a second cruize, and in hourly expectation of the enemy, when he first learned that reports prejudicial to his honour had been circulated in the fleet. In proving thus much, Captain Brereton conceives, he has established a claim of some importance; a right to expect that the Court would then, and that the Public will now, listen with great diffidence to the evidence of men who could conceal such a charge so long; let slip so fair an opportunity of having it fully examined; and then contrive to produce it at such a critical moment, when a full and a fair enquiry was almost impossible*. He has proved, that he did not experience this candor from the Court which he hopes to experience from the Public: That being empowered only to enquire, the Court proceeded, without power, without notice, without a charge, to try: That to create a charge they suffered one of their members to act in the triple capacity of Prosecutor, Evidence, and Judge. He has proved, that the power to enquire being limited to a certain day, and a certain part of the day, they suffered that member to create a charge which took in the space of four other days; and examined witnesses in support of the charge so created, and extended beyond the limits of their power to enquire. Waving, for a moment, his objections to these irregularities of the Court, Captain Brereton has proceeded to examine the charge created by this member of the Court, and the evidence given in support of it. From that evidence he has drawn the fullest proof, that, from the time the French were in sight to the time of the engagement, he did all that could be done to bring the ship into her station. From the same evidence he has drawn the fullest proof, that, during the time of the engagement, he did all that could be done to bring her into close action. He has proved therefore that he owed nothing to the indulgence, nothing to the candor of the Court, but received only strict justice from them, when they unanimously declared, that he had done every thing in his power to bring his ship into action. In examining the evidence which speaks to the idle charge of intoxication he has proved, that the witnesses in support of the charge are few, that they waver, and contradict each other, and themselves: that the witnesses who impugn

* Let the reader turn to Appendix (D.) It contains the minutes of a Court-Martial held in India. The business of that Court was to enquire into the conduct of Captain Brereton during two hours. The Court sat five days; and took up two days in deliberating upon the evidence before they pronounced sentence. How then was it possible that, in hourly expectation of an enemy, the Admiral should spare thirteen Captains long enough to enquire into the conduct of Captain Brereton during five days? Or can this Court, which sat only four hours, be supposed to have made such a full and impartial enquiry?

it, are many, firm, and consistent: that the former never agree when they attempt to fix the fact to any given time, but either contradict themselves, or are contradicted by others; or what they say is totally destroyed by circumstantial details of acts done, or orders given, by Captain Brereton, and which prove beyond a doubt, his recollection and presence of mind. Captain Brereton has examined with the same attention, and stated with the same impartiality, the evidence which relates to the alarms which it was pretended his conduct had created in the Officers of the ship; and to the consequent advice which they are said to have given to the First Lieutenant. And from a review of this evidence he has proved, that but one Officer knew of such advice, or says that he saw any occasion for it: that this very Officer grounds that advice upon a fact which he swears he did see, and swears it was impossible for him to see: that even this feeble, contradictory, testimony he did not give voluntarily, nor till a member of the Court put words into his mouth: that the Officer, to whom the advice was said to be given, said nothing of such advice, till, in violation of the unvaried custom of Courts-Martial, the Court had declared what the other witness, the sole witness in support of this fact, had said; or, rather, what the Court wished him to have said; and had insinuated, what was not true, that the evidence of that witness was confirmed by the evidence of others. In a word, he has shewn that the evidence on this head proves no misconduct on the part of Captain Brereton, but gives violent ground of suspicion, that one at least, if not two, of the witnesses, had been guilty of an endeavour to stir up mutiny and sedition.

Upon this fair review then Captain Brereton submits it to the Public, whether the Court has discharged the duty which it owed to that Public, when on such evidence as this, they dismissed him from a command, the great duties of which they unanimously declared he had done his utmost to fulfil. Whether their duty to the Public would not have been more conscientiously discharged, had they acquitted Captain Brereton with honour, and exhibited a charge against one at least of the witnesses for an endeavour to stir up mutiny and sedition.

Captain Brereton has been oppressed. To be oppressed is to suffer. But the sufferings of him who feels are light in comparison of the sufferings of those who inflict oppression. That there was partiality in some of the members of the Court cannot well be doubted: that there were contradictions in the evidence is clear to demonstration. These imputations must fall somewhere. Let them light there where they ought to light. Deprived as he has been of his command, Captain Brereton would not for a moment change situations with the man upon whom such imputations ought to fall. No Court, no power on earth, can restore peace to him. For himself, Captain Brereton hopes this artless narrative will restore him to the friendship of his profession, to the favor of his Sovereign, and to the good opinion of the world.

T H E E N D.



A P P E N D I X

T O T H E

CASE OF WILLIAM BRERETON, Esq;

Late Commander of His Majesty's Ship DUKE :

CONTAINING

**SUNDRY PAPERS to which Reference is made in the
foregoing NARRATIVE.**

A P P E N D I X

TO THE

CASE OF WILLIAM BREKTON, Esq;



Late Commander of His Majesty's Ship Duke;

CONTAINING

SUNDRY PAPERS to which Reference is made in the foregoing NARRATIVE.

APPENDIX (A.)

Containing the Correspondence between the Earl of
Sandwich and Captain *Brereton*, relative to the
Equipment of the *Duke*.

N^o I.

The Earl of Sandwich to Captain Brereton.

S I R,

Admiralty, May 21st, 1778.

IF the ship you command could be got speedily to sea, she would be a great addition to the strength of Admiral Keppel's squadron; you will therefore, I hope, excuse my troubling you with a private letter, to beg you to use the utmost exertion in getting the *Duke* into the Sound; and, if you can suggest any assistance that it is in my power to give you, towards effecting that desirable purpose, you may be assured of my readiness to co-operate with you, as I am exceedingly anxious to get as many three-deck ships as possible in a condition to act against the enemy; for on them I think the superiority of our fleet will greatly depend.

I am, with great truth and regard,

Your most obedient, and most humble servant,

SANDWICH.

II.

Captain Brereton to the Earl of Sandwich.

MY LORD,

Duke, in Hamoze, 24th May, 1778.

I have this moment had the honour to receive your Lordship's letter of the 21st; and am glad to find your Lordship places any confidence in me.

I must beg leave to inform your Lordship, that, as the *Duke* was a new ship, there was a great deal of work to do to her inside as well as outside,

to fit her for service; and the carpenters are still at work, fitting and fixing blocks, &c. &c. &c.

I found the ship driven up Hamoze, near Saltaſh: ſhe had been cut looſe to clear her of the Torbay when on fire.

On the 2d inſtant, I found two Lieutenants on board, and a few men; with theſe I got the ſhip warped down again off the dock; and moved all the ballaſt for ſea trim; and got off the rigging and booms. I repreſented to the Board of Admiralty, out of five Lieutenants that had been commiſſioned for the Duke, two only were capable of doing duty, viz. Meſſrs. Hallum and Allen; but the latter is now ſick on board.

Mr. Hewſon is dead; Mr. Graves is ſick on ſhore, and will be a cripple; and Sir Charles Knowles (who is at Briſtol) I hear will not be fit for ſervice for ſome time.

I think, my Lord, it would be greatly forwarding the ſervice, if your Lordſhip was to fill up the four vacancies (for I muſt take the liberty of calling them ſo) with men fit for duty.

On the 5th inſtant, I wrote a public letter to the Board, to entreat the favour that Mr. Scott (now Boatswain of the Royal William) might be removed to the Duke, under my command, in the room of Mr. Drifcal, who is ſuperannuated. Poor old man, the moment he got his warrant, he abſented himſelf from the ſervice, not chuſing to take charge of any ſtores.

I have neither had Mate or Midſhipman, until Friday, when we received the Torbay's men; and though your Lordſhip ordered one hundred of her men to be turned over to the Duke, we received only fifty-four.

Your Lordſhip muſt be ſenſible, a Boatswain is a very neceſſary man in all ſhips, but more eſpecially in ſo large a ſhip as the Duke; I therefore with Mr. Scott was haſtened here: if he was allowed travelling charges, to come by land, poſt, it would be worth the while: he is fit for the duty in this ſhip, and will follow me any where.

The commanding officer of the marines at this port informed me, ſome days ago, there were men enough at head quarters to furniſh the Duke with her whole complement: as ſeamen are ſcarce, I ſhall be obliged to your Lordſhip, if you will order her whole number to be embarked. The Torbay had ſome marines that had been uſed to a ſhip; if thoſe men compoſed part of the Duke's, it would be forwarding the ſervice.

Your Lordſhip may be aſſured of my utmoſt exertions to get the Duke ready for ſea.

I have the honour to be, with great reſpect,

My Lord,

Your Lordſhip's moſt obedient

Humble ſervant,

W. BRERETON.

The Earl of Sandwich.

III.

The Earl of Sandwich to Captain Brereton.

S I R,

Admiralty, May 28th, 1778.

You will find that almost every thing that you point out in the letter with which you favoured me, was already done. Mr. Simpson, whom you recommended, was some time ago appointed one of your Lieutenants; and if those gentlemen whom you represent as invalids, continue so much longer, they will be superseded. I believe there is still a vacancy for one Lieutenant on board the Duke; if you have any proper person on the spot, who has passed his examination, he shall be appointed. Scott, the Boatswain of the Royal William, absolutely declined the proposed exchange, so another has been appointed to your ship.

The full complement of marines are, I hope, on board, and I flatter myself that by this time you have got an additional supply of seamen, which must now come in fast to you by the press, as there is now no other ship at Plymouth that can interfere with you. I place entire confidence in your zeal for the service, which, I am persuaded, will enable you to bring your ship forward without much more delay; every assistance I can give you, you may depend on, as I am, with great truth and regard,

Your most obedient,

And most humble servant,

SANDWICH.

IV.

Captain Brereton to the Earl of Sandwich.

MY LORD,

Duke, in Hamoze, 31st May, 1778.

I have just had the honour to receive your Lordship's letter of the 28th instant; and beg leave to report to your Lordship, that, as I wanted assistance to carry on the service, I applied to Lord Shuldhham, to appoint Mr. Tobias Love to act as Lieutenant; and he now does duty in the Duke by the Admiral's order. This gentleman has passed his examination for a Lieutenant, and bears a good character; he has acted in that station before, in several of the King's ships, but never had interest to get confirmed: His looks bespeak him a good seaman; and if your Lordship will indulge him with appointing him a Lieutenant in the Duke, I shall be happy to receive him.

I have this moment sent to General Bell, to know if he has received your Lordship's orders to embark the whole number of marines in the Duke, and he informs me he has not received any orders for that purpose; nor are any orders come to the Admiral concerning it.

The Gunner of the Duke informs me, he has applied for superannuation. There can be no kind of doubt but that he will obtain it: and I could wish, my Lord, that an active man was appointed to receive the stores, and equip the ship, in his department: it would save a great deal of time, and prevent a survey afterwards.

We have received a few seamen since I had the honour to address your
Lordship

Lordship last; and you may rest assured, my Lord, I shall have pride in pushing this ship into the ocean with the greatest dispatch.

I have the honour to be, with great respect,

MY LORD,

Your Lordship's most faithful and obedient servant,

W. BRERETON.

V.

The Earl of Sandwich to Captain Brereton.

S. I R,

Mr. Tobias Love is appointed Lieutenant of the *Belleisle*; therefore, if you will recommend another proper person, who is on the spot, and who has passed his examination, he shall be made into the Duke.

Your not having your full complement of marines, was owing to a mistake of sending the letter to Portsmouth instead of Plymouth, which, however, is now set right.

I will endeavour to find you a good Gunner without delay; and am

Your most obedient humble servant,

Admiralty, June 4th, 1778.

SANDWICH.

VI.

Captain Brereton to the Earl of Sandwich.

MY LORD,

Duke, in Hamoze, 7th June, 1778.

As your Lordship has condescended to write to me private letters in matters that relate to the equipment of the Duke under my command, I take the liberty, my Lord, to address this letter privately to your Lordship, on the same subject.

In my reply to your Lordship's last letter, I took occasion to say, I should have particular pride in pushing this ship into the ocean; and I was in hopes that I should have got her into the Sound by the 16th or 17th of this month: but, as all her rigging is new, it requires a great deal of fitting; and we have great rains, which is very unfavourable for such work. I have the mortification to receive an order, this moment, from Lord Shulldham, to discharge fifty men, to complete the deficiencies in Admiral Byron's Squadron. I yield to this necessity; but it must, in some measure, retard our business. I beg leave to send to your Lordship a letter, which my Carpenter received from the Boatswain appointed to the Duke. Your Lordship must be sensible how essentially necessary a Boatswain is in such a large ship, and how much the service has suffered from not having an active man in that station, to assist in fitting her out; and your Lordship will perceive, from the difficulties that appear in the enclosed letter, that I am not likely to have any Boatswain at all.

I also beg leave to enclose to your Lordship, a letter I received from the Gunner, Mr. Whittington, who tells me he has written for superannuation, but no notice has been taken of his application.

Mr. Graves, the second Lieutenant, who was sent sick on shore, fell down the stone steps at the Hospital, and cut his face, near one of his eyes, in a

terrible manner, which, added to his other infirmities, has rendered him now totally useless.

Mr. Tobias Love, whom I took the liberty to mention (at your Lordship's request) as a fit person to be a Lieutenant of this ship, has received private information, that he is appointed fifth Lieutenant of the *Belleisle*, so that I shall be three Lieutenants short of complement. I think it my duty to mention all these things to your Lordship, that you may send Officers to her before she is ready for actual service. I shall forbear to complain of the extraordinary duty that has fallen to my share, in the equipment of this noble ship; and I trust she will, if the weather proves dry, to settle her rigging, be ready for sea by the time I mentioned in the former part of my letter.

Permit me, my Lord, in the utmost confidence, to express my wishes to know, if your Lordship means that I should go to sea when I am ready, without going to Portsmouth; as in that case I must provide myself here with many necessaries which I already have in that neighbourhood.

I have this instant received the honour of your Lordship's letter of the 4th instant, since when I have received the Duke's whole complement of marines. They are well chosen, and well commanded by Captain Jesse Adair.

I have the honour to be, with perfect respect,

My Lord,

Your Lordship's most faithful and obedient servant,

W. BRERETON.

VII.

The Earl of Sandwich to Captain Brereton.

SIR,

Admiralty, June 11th, 1778.

I hope that we now have supplied all your wants; I have this day signed commissions for three active and good Lieutenants for the Duke; a good Gunner, and a good Boatswain, have been appointed some time; one of them is on the spot, as belonging to the *Torbay*, the other belongs to the *Terrible*, and is, by this night's post, ordered to go to Plymouth, without waiting for the person who is to relieve him in the *Terrible*.

In these times it is impossible to say where a ship shall be first ordered; my opinion is, that you will be ordered to sail to join Admiral Keppel at sea, as soon as you are ready; which (notwithstanding your things are at Portsmouth) is, I am sure, what will be most agreeable to you, as it will give you the probability of being soonest upon actual service. When your first cruise is over, I will endeavour, if possible, to contrive that you shall go to Portsmouth instead of Plymouth; but you well know, that in time of war, nothing explicit can be said upon matters of this sort.

I am, with great regard,

Your most obedient

and most humble servant,

SANDWICH.

VIII. Captain

VIII.

Captain Brereton to the Earl of Sandwich

MY LORD,

Duke, in Hamoze, 16th June, 1778.

I had the honour to receive your Lordship's letter of the 11th instant, and shall be happy to see all the Officers your Lordship has appointed. I enquired last night, and do not find that the warrant for the Gunner of the Torbay is come down, or any directions about him. I think it necessary to inform your Lordship of it, lest the service may suffer for want of his entering on his charge in this ship.

I beg leave to send your Lordship a list of men brought over from Waterford in the Fanny tender. Your Lordship will easily perceive, from their statures, they are not fit men to handle this large ship, where every thing is so heavy. I hope your Lordship will excuse my pointing out, that there are, I am well informed, a great many seafaring men at, and about, Limerick; and if Captain M'Cleverty was to send one of his largest tenders to that part, a number of stout able seamen, and seafaring men, might easily be procured.

I have been anxious, my Lord, to forward the fitting out this ship, but we shall not get rid of the carpenters for some days; and the weather was wet and bad every day last week, except one. If the weather proves dry this week, I hope we shall be ready to go into the Sound on Saturday, as we have got every thing on board but the powder, bread, some beer, and a part of the Officers sea stores. We began to work on the ship (with 50 men only) on Monday the 9th May; and if I get her out of the harbour in six weeks, I flatter myself your Lordship will be satisfied with our exertions. A few days ago I learnt, that a number of seamen had secreted themselves about Fowey, in order to man a privateer that was fitting out in Catt Water. I dispatched one of my Mates in disguise, by land, to reconnoitre, and he fell into company with the Commander of the privateer at East Loo, from whose conversation he found, that he had been with the men, and was going to Plymouth to carry his vessel to Fowey, to receive the men on board. As many seamen have deserted from Admiral Byron's squadron, and the Duke has lost nine men in that way, I apprehend the Commander of the privateer had enticed the men to run from the King's service, to enter into his vessel, for I found he was to go to Fowey to take them on board. I represented this matter to Lord Shulldham; but his Lordship is of opinion, that we cannot send men by land to impress them at Fowey, and when they are on board the vessel, none but an express Admiralty authority can touch them.

The person I sent in disguise to Loo, was the gentleman Mr. Wright wrote to me about; his name is Michell.

Although it appears by Mr. Michell's certificates that he has been more than six years in the King's service, yet it has been mostly in a guardship; and I well know, that the duty of a seamen is not to be learnt in a port. Mr. Michell is a smart young man, and might manage a frigate very well; but it requires skill, and some practice, to conduct large ships. He seems very active and diligent, and executed the orders I gave him, in tracing the

(A) P P E N D I X (A.)

9

the route of the men to Fowey, with some address, and I dare say he will make a good officer. He is just returned from Plymouth, where I sent him to look at the privateer, and he reports she is gone into Cauland Bay this morning.

I have just received a note from the Commissioner's office, to inform me three commissions for Lieutenants are come down last night; but, my Lord, two of them were Lieutenants in the ship before.

I am, with great respect, my Lord,

Your Lordship's most obedient, and faithful humble servant,

W. BRERETON.

Earl of Sandwich.

IX.

The Earl of Sandwich to Captain Brereton.

S. I. R., Admiralty, June 20th, 1778.

I hope and believe, that by this time you have got all your Officers, and such as you will have no reason to complain of: you will see, that the three Lieutenants commissions you mention in your letter, were to push them up, in order to make room for the junior officers.

I have a better opinion of little men than you seem to have; and cannot give you hopes of getting any of a higher standard than those you describe in the list you have sent me. In this hurry of equipment we must not be too nice; if we are, our ships must remain in harbour, for larger-sized men are not to be got, and every one must content himself with neighbour's fare. I have no apprehension, but that when you get to sea, you will make a better figure with your Lilliputians, than our enemies would do, if they were manned with giants; therefore all I have to hope and recommend, is, to get ready as fast as possible, that we may send you orders to proceed to join Admiral Keppel, which I hope you may be able to do by the beginning of next month.

I must do you the justice to say, that you have been remarkably alert in the equipment of your ship; and that, considering the difficulties you have had to struggle with, from your want of Officers, you have done wonders.

I am, with great regard,

Your most obedient, and most humble servant,

SANDWICH.

X.

Captain Brereton to the Earl of Sandwich.

MY LORD,

Duke, in Hamoze, 23d June, 1778.

Your Lordship having condescended to write private letters to me on the subject of equipping the Duke, under my command, I take the liberty to address your Lordship in this private manner, to inform you, the ship is now ready for sea; and I should have gone into the Sound on Sunday, but that the winds have cast to the south-east, just as the tides would have answered to have gone out of the harbour.

b

The

APPENDIX (A.)

The news communicated by the Alert cutter, has determined me to attempt warping the ship out of the harbour by this night's tide (if the wind does not favour us); and I have settled with the Commissioner and Officers of the yard, for their assistance in this undertaking, which they were very ready to engage in, and promise me their utmost assistance. I beg leave to remind your Lordship, that we are one hundred and eighty seamen short of complement, and that two of the last-appointed Lieutenants have not appeared at the ship. When those arrive, we shall be ready to obey your Lordship's commands at the shortest notice.

I have the honour to be, with great respect,

My Lord,

Your Lordship's obedient, humble servant,

W. BRERETON.

P. S. I have just had the honour to receive your Lordship's very flattering letter of the 20th instant, and I am happy that my conduct meets your approbation.

Permit me, my Lord, to remark, that, considering Admiral Keppel's very critical situation (from what has happened the 17th instant) if your Lordship chuses to throw this ship into his scale, there are riggers, and other people, in this yard, that might be put on board for one cruise, that would enable the Duke to render some service to this country.

APPENDIX (B.)

Containing a Letter from the Honourable *Augustus Keppel*, Admiral of the Blue, and Commander in Chief of His Majesty's Ships employed to the Westward, to Mr. *Stephens*; copied from the *London Gazette Extraordinary*.

SIR,

Victory, at Sea, July 30, 1778.

MY letters of the 23d and 24th instant, by the Peggy and Union cutters, acquainted you, for their Lordships information, that I was in pursuit, with the King's fleet under my command, of a numerous fleet of French ships of war.

From that time, till the 27th, the winds constantly in the S. W. and N. W. quarters, sometimes blowing strong, and the French fleet always to windward going off, I made use of every method to close in with them that was possible, keeping the King's ships at the same time collected, as much as the nature of a pursuit would admit of, and which became necessary from the cautious

APPENDIX (B.)

11

tious manner the French proceeded in, and the disinclination that appeared in them to allow of my bringing the King's ships close up to a regular engagement: this left but little other chance of getting in with them, than by seizing the opportunity that offered, the morning of the 27th, by the wind's admitting of the van of the King's fleet under my command leading up with, and closing with, their center and rear.

The French began firing upon the headmost of Vice Admiral Sir Robert Harland's division, and the ships with him, as they led up; which cannonade the leading ships, and the Vice Admiral, soon returned, as did every ship as they could close up: the chace had occasioned their being extended, nevertheless they were all soon in battle.

The fleets, being upon different tacks, passed each other very close: the object of the French seemed to be the disabling the King's ships in their masts and sails, in which they so far succeeded as to prevent many of the ships of my fleet being able to follow me when I wore to stand after the French fleet; this obliged me to wear again, to join those ships, and thereby allowed of the French forming their fleet again, and range it, in a line to leeward of the King's fleet towards the close of the day; which I did not discourage, but allowed of their doing it without firing upon them, thinking they meant handsomely to try their force with us the next morning; but they had been so beaten in the day, that they took the advantage of the night to go off.

The wind and weather being such that they could reach their own shores before there was any chance of the King's fleet getting up with them, in the state the ships were in, in their masts, yards, and sails, left me no choice of what was proper and adviseable to do.

The spirited conduct of Vice Admiral Sir Robert Harland, Vice Admiral Sir Hugh Palliser, and the Captains of the fleet, supported by their Officers and men, deserves much commendation.

A list of the killed and wounded is herewith inclosed.

I send Captain Faulknor, Captain of the Victory, with this account to their Lordships; and am,

SIR,

Your most obedient and
very humble servant,
A. KEPPEL.

Philip Stephens, Esq;
Secretary of the Admiralty.

APPENDIX (C.)

Minutes of a Court Martial, held on board His Majesty's Ship *Queen*, at Sea, on *Tuesday* the 25th of *August*, 1778.

P R E S E N T,

Sir Robert Harland, Baronet, Vice Admiral of the Red, President;
Vice Admiral Sir Hugh Palliser, Baronet;
Rear Admiral John Campbell.

Captain Joshua Rowley, Captain Richard Edwards,
Robert Digby, Sir John Ross, Baronet,
Alexander Hood, Hon. Robert Boyle Walsingham,
Sir John Lindsay, Michael Clements,
Joseph Peyton, John Laforey.

THE Court being assembled, the prisoner present, and audience admitted, the order for assembling a Court was read, as follows; viz.

"By the Honourable Augustus Keppel, Admiral of the Blue, and Commander in Chief of a Squadron of His Majesty's ships employed, and to be employed, in the Channel, Soundings, &c.

"Captain Brereton, of his Majesty's ship *Duke*, having, by his letter of this day's date, requested that I would order his conduct (on the 27th of July last, when the fleet under my command were chasing and attacking the French fleet) to be enquired into;

"You are, by virtue of the power and authority to me given, hereby empowered and directed (as soon as conveniently may be) to assemble a Court Martial, consisting of the several Flag Officers and Senior Captains of the Squadron, to enquire into the conduct of Captain Brereton on the 27th of July last. For your farther information, I send you Captain Brereton's original letter. For which this shall be your warrant.

"Given under my hand, on board His Majesty's ship *Victory*, at sea, the 24th August 1778.

A. KEPPEL."

"To Sir Robert Harland, Baronet, Vice Admiral of the Red, &c.

"By command of the Admiral,

GEO. ROGERS."

The Court, and Judge Advocate, were then sworn; and Captain Brereton's letter to Admiral Keppel (mentioned above) was also read, as follows, viz.

"SIR, Duke, 24th August 1778.

"Having heard some aspersions are thrown on my conduct of the 27th of July last, when the fleet under your command were chasing and attacking the French fleet, I desire, Sir, you will be pleased to order my conduct to be enquired into on that day.

"I am, Sir,

"Your most obedient and most humble servant,

"W. BRERETON."

"To the Honourable Augustus Keppel, &c."

Q. from the Court.—What where the aspersions you mentioned in your letter?

A. All that I ever heard of them was yesterday morning, from Captain Walsingham; upon which, I went to Admiral Keppel, and, in consequence thereof, wrote the letter which has been read to the Court.

The Court was cleared, a doubt arising whether Captain Walsingham should be examined by the Court; and it was resolved, that the prisoner should be told, That it was the resolution of the Court, to examine Captain Walsingham: Accordingly Captain Brereton was called into Court, and the audience admitted; when he delivered a paper, which he desired might be read, and which was accordingly read, as follows; viz.

"*An address to Sir Robert Harland, Baronet, and the Members of this Court.*"

"GENTLEMEN,

"It gives me much uneasiness to hear that reports have been spread abroad to my prejudice, with respect to my conduct on the 27th of July last, when His Majesty's fleet was passing and engaged with a fleet of France.

"Yesterday morning was the first time I heard any reports had been circulated to my disadvantage; I therefore thought proper to write to the Commander in Chief, to request he would be pleased to order my conduct to be enquired into on the said 27th of July last, that I might have an opportunity to vindicate my honour. I am concerned to take up the time of the Admirals and Captains of the fleet at this time; but it is a justice I owe to myself, it is a justice I owe to my country, that I may wipe off the reflections that have been cast upon my character, before our fleet is again opposed to that of France.

"I appeal to the breast of every member of this honourable Court, whether there is not a degree of barbarity in deferring accusations (supposing there was any foundation for them) to this late hour; but I rest the fullest confidence, that I shall prove, to the satisfaction of the Court, that I used every

effort

effort in my power to bring his Majesty's ship, under my command, forward, to maintain the glory of his Majesty's naval power, and to subdue his foes.

"Notwithstanding I had carried a pressed sail from the day we first saw the French fleet, yet it was impossible to keep her up to the windward, so as to be close in a line with the weathermost of his Majesty's fleet, at the moment they were passing and engaging the French; but in this misfortune I was not singular; it was the unavoidable fate of other ships, as well as the Duke, and what has often happened, and may happen again, when the enemy are not disposed to a regular combat.

"But I have the comfort to know, and shall be able to prove to the Court, that the Duke fetched up pretty close to some of our ships, and weathered two of the van of our line who had been engaged; and when the French had passed our fleet, the Duke was surrounded by our ships in such a manner, that it was impossible either to tack or to wear, without being in danger of running on board of them, which made it necessary to stand beyond them; which having effected, I caused the Duke to be tacked, and pressed all the sail the ship could bear, to join Sir Robert Harland in the Queen, who was in pursuit of the enemy.

"When we passed Admiral Keppel in the Victory, he made the signal for the line of battle ahead. I conceived it was my duty to have obeyed that signal; but as Vice Admiral Harland was standing on towards the enemy, I pushed on to support him, and absolutely got between the Queen and the enemy's line. Soon afterwards Admiral Keppel made the signal for the Queen and the Duke to get into their stations, which I obeyed, and followed the Admiral of my division into the line; by which manœuvre we increased our distance from the enemy, and in this station continued all night, and, at day-light, we found the French had taken the advantage of the night, and their leeward situation, to make off.

"I am most happy in having so many respectable and experienced Officers to scrutinize my behaviour; and, I trust, they will be as tenacious of my honour as their own.

"I therefore shall crave their indulgence, in calling several witnesses, to prove that I did every thing that I could to assist his Majesty's ships, and to destroy his enemies; and leave it to the candour of the Court to determine, whether I have not strictly done my duty.

"WILL^M BRERETON."

The Court then informed the prisoner, that they would examine Captain Walsingham; to which he consented, and he was accordingly sworn.

Q. by the Prisoner.—May I be permitted to ask Captain Walsingham any questions?

A. Yes.

Q. by the Court.—Captain Walsingham, you will please to inform the Court of what you know concerning the reflections thrown upon the prisoner's conduct in the late engagement with the French fleet.

A. Having heard that many very disagreeable reflections were made upon the

the conduct of Captain Brereton, during the time we were in sight of, and engaged with, the French fleet, I yesterday morning went on board the Duke, and acquainted him thereof, and that I thought it would be proper for him, at this critical period, to have his character cleared up.

After some conversation, Captain Brereton went to dress; and Captain Adair of the marines came up to me, and informed me, that at the time of engaging the French fleet, and very often while we were in sight of them, Captain Brereton was incapable of doing his duty, as he was frequently drunk; that he (Captain Adair) had several times conversed with the Officers of the ship concerning it, and that they all agreed it was so. Soon after this, Captain Brereton went on board the Victory, and I understand, that in consequence thereof he wrote the letter to Admiral Keppel, now before the Court.

Q. from the Prisoner.—Did not Mr. Byard, the First Lieutenant, say, before you, yesterday, that on the day of action I used every effort to get the ship engaged?

A. He did.

Q. from the Court to the Prisoner.—Do you mean that the whole of your conduct should be enquired into at this Court, from the 23d to the night of the 27th of July last, which is the time we were in sight of the French fleet; or that the enquiry should be confined to the 27th only?

A. I submit the whole of my conduct to this Court.

Captain Jesse Adair of the Marines, on board the Duke, was sworn.

Q. Relate to the court the observations you made upon Captain Brereton's behaviour, during the time you was in sight of the French fleet.

A. On the 23d of July last, when we first discovered the French fleet, I took notice that Captain Brereton appeared a little confused, and I made the same remark the morning following, when he was very much agitated; I then mentioned it to the Officers of the ship, that they might also observe it. On the 24th or 25th, I applied to all the Officers, particularly the First Lieutenant, to desire they would prevail upon the Captain to get the ship more by head, as it was their opinion she would sail the better for it; some tons of iron ballast were accordingly shifted forward, and she then carried her helm more weatherly; but the Captain refused to have any of the after cannon, and some shot, moved forward, as they desired. On the 26th, he supped in the ward room, and was so very drunk that evening, that I understand the Master put him to bed; the next day, the 27th, when the action began, between eleven and twelve o'clock in the forenoon, I observed he was then much confused, from what had happened the preceding evening: he again supped with us in the ward-room on that night, after the action, and came upon deck about nine o'clock, when he staggered so much that I took hold of him, before the two Lieutenants who had the watch upon deck, and led him into his cabin, where I placed him upon his cot, with his back against the bulkhead; at this time he was so much in liquor that he could scarcely speak.

Q. During the time the French fleet were in sight, did Captain Brereton use his endeavours to encourage the ship's company?

A. I should

A. I should think the contrary, from his appearance.

Q. You say he appeared much confused and agitated; did you think it proceeded from his anxiety to engage the enemy, or otherwise; and did he appear much more confused than usual?

A. He certainly was much more confused than usual, and I should judge it proceeded partly from the effects of liquor.

Q. *from the Prisoner.*—When I have eat in the ward-room, and sat next to you, have you not frequently urged me to drink?

A. Yes, but only in the manner I would every gentleman who dined at my table.

Q. On the 27th at night, when you say I staggered upon the deck, and that you led me to my cabin, did I not frequently refuse to leave the deck; And did you not use many entreaties, saying, "Sir, you must take rest; you are ill," and repeated those words several times?

A. You told me you had a fever upon you, and a trembling all over you, for which reason I advised you to lie or sit down, as I then thought that you was ill.

Q. *from the Court.*—At what time did you ask him to lie down; Was it the day you accused him of being drunk?

A. It was at different times.

Mr. Thomas Byard, First Lieutenant of the Duke, sworn.

Q. Inform the Court whether, during the time the French fleet were in sight, the behaviour of Captain Brereton was such as became an Officer?

A. The summons, and the order, mentioning the 27th only, I have only prepared myself for that day.

Q. Captain Brereton desires that the whole of his conduct, from the 23d of July last, to the 27th following, may be enquired into at this Court; you will therefore inform them of any observation you made upon his behaviour during that time.

A. On discovering the French fleet, on the 23d of July, Captain Brereton ordered every necessary preparation to be made for getting the ship ready for action. A few days before we engaged, he told me that he found himself very unwell.

Q. Was it before the 23d, or after the appearance of the French fleet, that he told you so?

A. It was after it a day or two; and it appeared evidently that he was indisposed; for very often he was not able to stand upon the deck, but was obliged to go and throw himself down on his bed. At the intermediate times he gave orders to have every thing in readiness for action.

Q. What happened on the 27th?

A. On the 27th, when the fleet tacked towards the French, I remarked to Captain Brereton, that the top-gallant sails were not set, upon which he very cheerfully ordered them to be set; this was about half past ten o'clock. We stood on, and, as we came up, occasionally fired between two of our own ships, as we could get an opportunity. After we had passed the French line, Captain Brereton gave orders to have every thing ready for going about, as

soon

soon as we could clear our own ships, and the ship was tacked; but upon the signal being made by the Commander in Chief for a line of battle, Captain Brereton thought he should bring to in the rear, and mentioned it to his Officers, whom he sent for. I then observed to him, that as Sir Robert Harland was standing on towards the French fleet, and our ship was not damaged, it would be proper to follow Sir Robert with all the sail the ship could bear. It was then observed by the Officers, that Captain Brereton went into his cabin, and drank a tumbler of grog, and they desired that I would mention to him the impropriety of his doing so, at a time when it might render him incapable of doing his duty, and commanding the ship; I declined doing it then, hoping that the seeming confusion, that appeared upon him, was owing to his indisposition, as I had remarked him, at all other times, to be the most sober, regular man I had ever the pleasure to sail with. I kept upon deck till twelve o'clock that night, and had very little intercourse afterwards with the Captain.

Q. During any part of the time, from the 23d to the 27th of July, did you see Captain Brereton drunk?

A. I saw him a little confused; and I am afraid it was from drinking a glass of grog before dinner. I really believe it was so.

Q. Do you remember Captain Brereton being in the ward-room on the 27th at night?

A. I was then upon deck.

Q. Was he drunk, in your opinion, at any time from the 23d to the 27th?

A. I never observed him the worse for liquor but on that day (the 27th) when, I apprehend, his confusion arose from having drank too much.

Q. Was his behaviour, in other respects, animating; Did he encourage his Officers and men by an example of fortitude and courage?

A. He gave every order that his state of sickness would admit.

Q. Were the Officers and men quartered?

A. Yes.

Q. Did he prepare his ship for action, and encourage them?

A. He prepared the ship; and, I think, he did his duty with regard to encouraging the men; but I never saw men who shewed more order, or seemed less to want encouragement.

Q. Did Captain Brereton complain to you of illness before the 23d?

A. To me he did not.

Q. What time was it that the Officers desired you to wait upon Captain Brereton, and desire him not to drink?

A. Upon the 27th, nearly about half past two in the afternoon.

Q. *from the Prisoner.*—Has not Captain Brereton been, at all times, earnest in getting the Duke up with the fleet, particularly while chasing the enemy?

A. You always gave me such orders in my watch.

Q. You say, that on the 27th, you desired that I would set the top-gallant sails, which I cheerfully did. Had any other ship her top-gallant sails set at that time?

A. None but the Queen, as I could then observe.

Q. You observe, that on the 27th, in the afternoon, when the signal was made for forming the line ahead, you was sent for upon deck; Was it not by my directions you was sent for?

A. I believe it was.

Q. Have I not made it a constant rule, before retiring to rest, to come upon deck, and direct the Officers of the watch to keep as near to Sir Robert Harland as possible during the night?

A. Whenever it was my watch you have.

Q. Have you not known, that the Duke has been often obliged, during the night, to bear out of her station by ships running down upon her, and encreased her distance from the Vice Admiral by that reason?

A. It has happened frequently.

Q. Whether every method in use was practised to bring the Duke into better sailing trim?

A. You did every thing that the Master and Officers advised, except in removing the guns, which you did not think proper, when you expected very soon to be engaged.

Q. Have you not written to your friends, that you judged it impossible to get the Duke into action with the other ships of our fleet?

A. I now say, that, situated as she was upon the morning of action, no endeavours could have done it.

Q. And, from the 23d, you think every means was used to bring her into her station?

A. I think there was.

Q. Did you observe some ships of our fleet to leeward of us, and at some distance, as we passed by the French, when upon the starboard tack?

A. I believe there was one or two on our larboard quarter: it was then about eleven, or between that and twelve o'clock.

Q. *from the Court.*—Did the Duke preserve that distance till she had passed the French line?

A. I think she did.

Q. What ships were they?

A. I cannot say.

Q. Did those ships get nearer to the Admiral, and French fleet, than you?

A. They did not: we had all the sails out that we could set.

Mr. Alexander Allen, Second Lieutenant of the Duke, sworn.

Q. Inform the Court what observations you made upon Captain Brereton's behaviour, from the 23d to the 27th of July last, while we were in sight of the French fleet.

A. Captain Brereton seemed to be much agitated, and, in my opinion, intoxicated with liquor, particularly upon the 27th, when Captain Adair put him to bed. He was put to bed by the Master on the evening before.

Q. Was it in consequence of being drunk, that the Master put Captain Brereton to bed the evening before?

A. Yes.

Q. Is this from your own knowledge, or hearsay?

- A. I saw it.
- Q. And he appeared to you to be drunk?
- A. He did.
- Q. Was it in consequence of his being in liquor, that he was put to bed by Captain Adair, on the night of the 27th?
- A. Yes; it was then about half past nine o'clock.
- Q. On the 27th, at night, when Captain Brereton came upon deck, did he give any orders to the Officers of the watch?
- A. None. I and Mr. Wolseley had the watch upon deck.
- Q. Did you join in advising Mr. Byard to remind the Captain, that by his drinking, he might render himself unfit for his command?
- A. I did.
- Q. When was that?
- A. The afternoon of the 27th of July, after the firing was over.
- Q. What induced you to do so?
- A. We saw him drink grog frequently.
- Q. Where was you quartered?
- A. Upon the lower gun deck.
- Q. Did this conduct in Captain Brereton alarm you, and the other Officers of the ship, as to make you apprehend it would be dangerous to his Majesty's service, and render him unfit to command the ship?
- A. It did; and Mr. Byard was desired, if there should be a probability of the ship coming again into action, to be very attentive to Captain Brereton's behaviour, and, should he suspect that he would act improperly, to put him to his cabin, and take the command of the ship.
- Q. Was this conversation in presence of the First Lieutenant?
- A. Mr. Byard, who acted as First Lieutenant, was present.
- Q. *from the Prisoner.*—Did you see me go into my cabin to drink during the action?
- A. I was then upon the lower gun deck.
- Q. Have I not at all times been earnest to keep the Duke well up with the fleet, particularly when in chase of the enemy?
- A. Yes.
- Q. Have I not made it a constant rule to come upon the quarter deck before retiring to rest, and direct the Officers of the watch to keep as near Admiral Harland as possible during the night?
- A. Whenever it was my watch you did.
- Q. Have you not known the Duke very frequently, in the night, to have been obliged to bear out of her station, by ships running down on her, and her distance from the Vice Admiral much increased by this reason?
- A. I have known it happen frequently.
- Q. Was not every method in use practised to bring the ship into better trim?
- A. Yes.
- Q. Did I not immediately order the ship to be cleared, upon seeing the French fleet, and went round her myself to see that she was so?
- A. Yes.

Mr. Robert Simpson, Third Lieutenant of the Duke, sworn.

Q. Inform the Court what observations you made upon the behaviour of Captain Brereton, from the 23d to the 27th of July last.

A. During that time every method was used to bring the Duke into her station; as I was at my quarters upon the middle gun deck, during the action, I had not an opportunity of seeing the Captain's behaviour; when I came upon deck after the action, I observed nothing in it unusual.

Q. During the time mentioned, did you ever see Captain Brereton in liquor?

A. I heard him frequently complain of illness, but I cannot say I saw him drunk.

Q. When you had occasion to go to him upon duty, did you never perceive that he gave his orders indistinctly, and that he was incapable of doing his duty?

A. Only on the night after the action, when he gave me some orders very confusedly; but whether from being in liquor, or occasioned by ill state of health, I cannot tell.

Q. Had the same orders or words come from another man, what would you have thought?

A. It might proceed from being in liquor, or from being indisposed through fatigue.

Q. Did you join in the advice to Mr. Byard, to remind Captain Brereton, that he might render himself unfit for his command by drinking too much?

A. I heard say that Captain Brereton was a little groggy, but know nothing of it.

Q. Did you know any thing of the conversation that passed in the ward-room, for the First Lieutenant to take the command of the ship?

A. I did not.

Q. Did you know of the Master putting Captain Brereton to bed on the night of the 26th of July?

A. I did not.

Q. Did Captain Brereton ever complain to the Surgeon of being indisposed?

A. I cannot say; he has complained to me.

Q. Did you ever perceive any thing in Captain Brereton's behaviour, that could give any occasion for the conversation that passed in the ward-room, of his not being able to do his duty?

A. Never, excepting that night.

Q. Were your people quartered?

A. Yes, they were.

Q. Did you observe Captain Brereton's behaviour; Was it animating; Did he shew his Officers and men an example of fortitude?

A. I cannot say it was particularly so.

Q. *from the Prisoner.*—Have I not at all times been earnest that the Duke should be kept well up with the fleet, particularly when chasing the enemy?

A. I always understood so.

Q. Have I not always come upon the quarter-deck before going to rest, and

and left it in charge of the Officer of the watch, to keep well up with the Vice Admiral?

A. Always.

Q. In consequence of such orders being given the night before the action, was not the Duke much nearer to our fleet the next morning?

A. I cannot recollect, but am clear every endeavour was always used to get her up with the fleet.

Q. *from the Court.*—You say that one night Captain Brereton's orders to you were confused; What do you think that was occasioned by?

A. I suspect it arose from the effects of liquor; but it might be fatigue, and the want of rest.

Q. What was your observation upon Captain Brereton's ordinary conduct in drinking; Did you consider him as a sober man?

A. I always did.

Q. During the period of time mentioned, did you ever observe that he drank more than usual?

A. I did not.

Mr. Henry Cooper, Master of the Duke, sworn.

Q. Inform the Court of what observations you made upon the conduct of Captain Brereton, from the 23d to the 27th of July last.

A. From the 23d to the 26th, he frequently complained of being ill; and on the 26th, from the fatigue of clearing the ship, and preparing for action, he appeared to be very much indisposed. About eleven that night, he desired to see the log-board, which I brought to him; he looked upon it, and said it was well, and soon after told me he was so much fatigued, that he wished he had a fail to lay down upon. I went and got his cot hung up, during which he had sent for his cloak, and gone into the quarter gallery with it round him; when his cot was hung up, I desired him to lay down, but he said he could not think of it, as the French were so near; upon this I took my leave, and left him.

Q. Did you make any observations upon his behaviour on the 27th?

A. The next morning he did not seem as chearful as usual, which I imagined was owing to his being fatigued. After the action he appeared to be much confused.

Q. Where was you during the action?

A. By the Captain, upon the quarter deck. He wished several times that he could have joined in the action, and desired we might tack, as soon as it could be done with safety: this was in the latter part of the action, and we were then prevented by the ships round us; when we were clear of them, the ship was put about, and we proceeded after Admiral Harland with all the sail we could possibly carry.

Q. Did you make any remark of his being in liquor?

A. I believe he had drank a little on the 27th, in the evening.

Q. Was you in the ward-room the 26th or 27th at night?

A. No, I was upon deck.

Q. Did.

Q. Did you think Captain Brereton was in liquor when you left him on the 26th at night?

A. He was the worse for liquor.

Q. On the night of the 27th, did you think he was the same?

A. I did.

Q. Did you know that the Officers, in order to prevent any accident happening to His Majesty's service from his misconduct, had intended putting him to his cabin, and taking the command of the ship from him?

A. I did not at that time; but have since heard that it was intended.

Q. Did you see any thing in Captain Brereton's conduct that could afford a reason for such conversation?

A. Never.

Q. Did you know that the Officers desired the First Lieutenant would remind Captain Brereton, that his drinking so much would render him incapable of doing his duty?

A. I did not.

Q. From your own observations, do you think such consultations were necessary?

A. I think they were.

Q. Did you see any thing at that time in his behaviour that rendered such advice necessary or prudent to be given to him?

A. Yes.

Q. Do you think he was perfectly sober when the fleets engaged?

A. I do not think he was.

Q. You say he appeared confused on the morning of the 27th? What was it owing to?

A. I should suppose from fatigue, and the effects of liquor.

Q. *from the Prisoner.*—When the ship was first observed to be leewardly, and did not sail so fast as the other ships, did I not consult you upon it?

A. Yes; and I removed the iron ballast, shot, and some other things, excepting the guns, abaft. I removed the iron ballast on the 25th, and the shot on the 26th.

Q. When the Officers thought that the ship would go better more by the head, did you not agree with me, that she perfectly was agreeable to the trim given by the master builder?

A. I did.

Q. Have I not at all times been desirous to keep the Duke well up with the fleet, and particularly while chasing the enemy?

A. Yes, always.

Q. Have I not caused more sail to be carried sometimes than you thought the masts would bear?

A. I cannot say I remember that.

Q. Did you not once desire me to order the top-gallant sails to be taken in?

A. Yes, but they had been set but a very short time, and I thought the masts were in danger of going over the side.

Q. When we had tacked in pursuit of the French fleet, and were following Admiral Harland, was not the Duke the nearest ship of our fleet to the enemy,

enemy, before the ships returned to form the line, agreeable to the signal then out on board the Victory?

A. I cannot say; it might perhaps be so: the French fleet had then formed their line.

Q. Do you think that there was any thing in my power left undone to bring the ship properly into action?

A. No, not any thing.

Mr. Byard was again called before the Court.

Q. It has appeared by evidence given to this Court, that Captain Brereton's conduct gave occasion to some of your brother Officers to desire that you would attend to his behaviour, that no detriment might happen to his Majesty's service from his misconduct, and, if you should see sufficient reason, to put him to his cabin, and take the command of the ship: Was this mentioned to you by them?

A. It was mentioned to me by them, that if, from Captain Brereton's conduct, there should be reason to apprehend his drawing back, and not bringing the ship into action, should there be a probability of our being again engaged, they would look to me to take charge of the ship: and I told them, that when I saw it necessary, I should undoubtedly do so; but I then saw no occasion for it.

The Court then called upon Captain Brereton for his defence; which he informed them, that he should rest upon the consideration contained in the paper that had been read to them; and desired that the following witnesses might be called.

Mr. Faithful Fortescue, Fourth Lieutenant of the Duke, sworn.

Q. *from the Prisoner.*—Have I not at all times been earnest in getting the Duke up with the fleet, and particularly when in chase of the enemy?

A. I believe so, I have no reason to say otherwise.

Q. Have I not made it a constant rule to come upon the quarter-deck before going to rest, and give it in charge to the Officer of the watch to keep as near as possible to Admiral Harland?

A. I remember such orders to be given.

Q. Do you not remember hearing me complain, the day after we saw the French fleet, of a cold and fever I had got by being upon deck all night?

A. I do not recollect the day, but remember Captain Brereton complaining that he was ill.

Mr. William Wolsley, Fifth Lieutenant of the Duke, sworn.

Q. *from the Prisoner.*—Have I not at all times been earnest in getting the Duke up with the fleet, and particularly when in chase of the enemy.

A. Yes.

Q. Have I not made it a constant rule to come upon the quarter-deck before

fore going to rest, and give it in charge to the Officer of the watch, to keep as near as possible to Admiral Harland?

A. Yes, to keep in her station.

Q. Have you not known the Duke to have been frequently driven out of her station in the night, by other ships bearing down upon her.

A. It has sometimes happened, of course.

Q. Do you think that any thing in my power was left undone to bring the ship properly into the action on the day of engagement?

A. The major part of the Officers of the ship, on the day before the action, desired that some of the guns might be moved forward, which you did not comply with.

Mr. John Yelland, Midshipman of the Duke, sworn.

Q. from the Prisoner.—Where was you quartered?

A. Upon the quarter-deck, to pass the word.

Q. When we were drawing up with the French fleet, on the 27th of July, did I not give you orders to go down to the Lieutenants upon the gun decks, and desire that they would be very careful to fire clear of our own ships?

A. Yes.

Q. Were not those orders given to you distinctly, resolutely, and without hesitation?

A. They were.

Q. When I perceived that some of our shot fell near one of our own ships, did I not give you directions to go down to the Lieutenants, and tell them to cease firing till I sent them fresh orders?

A. You did.

Q. Did you at that, or any other time, while I have been on board the Duke, see me in liquor?

A. No.

Q. Did you perceive me in any confusion, that might give you reason to suppose I was in liquor?

A. I did not.

Mr. Thomas Hewett, Midshipman of the Duke, sworn.

Q. from the Prisoner.—Where was you quartered?

A. Upon the quarter-deck.

Q. When we were drawing up with the French fleet, on the 27th of July last; did I not give you orders to go down to the Lieutenants upon the gun decks, and desire they would be very careful to fire clear of our own ships?

A. Yes.

Q. Were not those orders given to you distinctly, resolutely, and without hesitation?

A. They were.

Q. When I perceived that some of our shot fell near one of our own ships, did I not give you orders to go down to the Lieutenants, and give them directions to cease firing till I sent them word?

A. Yes.

A. Yes.

Q. Did you at that, or any other time, since I have been on board the Duke, see me in liquor?

A. No, never.

Mr. Robert Bulcock, Assistant Clerk of the Duke, sworn.

Q. from the Prisoner.—Where was you quartered?

A. Upon the quarter-deck, to pass the word.

Q. When we were drawing up with the French fleet, on the 27th of July last, did not I direct you to go to the Lieutenants upon the gun decks, and give them my orders to be very careful to fire clear of our own ships, and not to fire but when they were certain they were within reach of the enemy?

A. Yes, you did.

Q. Were not those orders given to you distinctly, resolutely, and without hesitation?

A. Yes.

Q. When I perceived that some of our shot fell near our own ships, did I not order you to go and inform the Lieutenants of it, and give them directions to cease firing till I sent them fresh orders?

A. You did.

Q. Did you at that, or any other time, since I have been on board the Duke, perceive me to be in liquor?

A. No, never.

Q. Did you perceive me in any confusion that day, which might give you cause to suppose I was in liquor, or incapable of doing my duty?

A. No, far from it. I saw you encouraging the men to execute their duty.

Q. Was you not employed with me and Mr. Byard, the First Lieutenant, in watching and quartering the whole ship's company?

A. I was.

Mr. Thomas Beach, Captain's Clerk of the Duke, sworn.

Q. from the Prisoner.—Where was you quartered?

A. Upon the quarter-deck.

Q. Did you take notice of my giving any orders upon the quarter-deck of the Duke, from the 23d to the 27th of July, while we were in pursuit of the French fleet; and did you remark in what manner they were given, if without diffidence, and with resolution?

A. I heard you give orders to Mr. Yelland, your Aid de Camp, to desire the Lieutenants would not fire till they thought the shot would do execution.

Q. Did you, between the 23d and 27th of July, or at any other time since you have been on board the Duke, see me in liquor?

A. I never did.

Q. Did you see me in any confusion on the 27th, that might give you reason to suppose I was in liquor?

A. No.

Mr. Nathaniel Kentish, Surgeon of the Duke, sworn.

Q. Did I not complain to you, the morning after we fell in with the French fleet, that I had got a violent cold by sitting up all the night before, and that I found myself very feverish?

A. Yes, you did. Upon finding Captain Brereton feverish, I advised him to lose a little blood, which he refused. I made some cooling draughts and powders, which he took every morning; but he still continued to complain of being much indisposed.

Q. Did you, at any time since I have been on board the Duke, see me in liquor?

A. Never, to my knowledge.

Q. Did you ever observe, when I dined in the ward-room, that I drank more than any body else?

A. No, never.

Q. *from the Court.*—When was it Captain Brereton first told you he was indisposed?

A. I think it was on Sunday the 26th of July.

Q. Do you mess in the ward-room?

A. I do.

Q. Do you remember Captain Brereton's spending the evening in the ward-room on the 26th of July?

A. I cannot say I remember it.

Q. Do you remember his being there on the 27th?

A. I went to bed very early that evening, as I found myself much fatigued; but I never perceived Captain Brereton in liquor at any time.

Mr. James White, Midshipman of the Duke, sworn.

Q. *from the Prisoner.*—I think I saw you in the ward-room of the Duke one of the nights between the 23d and 27th of July last, when I supped there?

A. I do not recollect it, and I am certain not any evening when you was there.

Q. Did you at any time, while I have commanded the Duke, see me in liquor?

A. No, never.

William Pearce, Captain Brereton's Steward, sworn.

Q. Do you not always attend me when I retire to rest?

A. Yes, constantly.

Q. Did you at any time, between the 23d and 27th of July, perceive me to be in liquor?

A. Never.

Q. Did you not hear me complain of being ill, the morning after we saw the French fleet?

A. I did.

Q. Did you, at any time since I have been on board the Duke, perceive me to be in liquor?

A. Never, not in the least.

Q. Did you observe, when I eat with the gentlemen in the ward-room, that I drank more than any other gentleman?

A. Never; you rather refused it.

Q. *from the Court.*—Upon either of the nights of the 26th or 27th of July, when Captain Brereton supped in the ward-room, was there much liquor drank?

A. Not by the Captain, I am certain.

Q. You always attended Captain Brereton?

A. Yes.

Q. Did you attend him on the night of the 27th, after the action?

A. Yes; every night, excepting the one before the action; when, being very fatigued, I went to bed before him.

Q. Who was in the cabin when you left Captain Brereton on the 27th at night?

A. Nobody.

Q. Did you go into the cabin with him, or did any other Officer take him in?

A. No one went in with him but me.

Q. Did you go out of the cabin on the evening of the 27th, after the action, before Captain Brereton went to bed?

A. Yes; he sent me for the log-book.

Q. Was it upon the 27th you went for the log-book? Or was it the log-board?

A. It was for the log-book, and on the 27th.

Q. Who did you go to for it?

A. The Master.

Q. Did he give it to you, or carry it himself?

A. He gave it to me.

Q. To whom did you return it?

A. It was not returned that night.

Mr. Kentish again called into Court.

Q. *from the Court.*—Do you think, that from Captain Brereton's state of health, on the 26th and 27th of July last, a less quantity of liquor than usual might affect him?

A. I think it might.

Captain Brereton then informed the Court, that he would not trouble them with examining any more witnesses, as he hoped those he had called had fully convinced them there was no foundation for the charge of his having been in liquor, and not capable of doing his duty; which, he believed, they were well satisfied he had executed to the utmost of his power, and exerted every human means to bring the ship into action on the day of engagement, which, though it was his misfortune not to accomplish, he hoped would not be charged to him as a fault; but, trusting to his innocence, and

good intentions, he, with pleasure, submitted the examination of his conduct to a Court, which, he made no doubt, would be as careful of his honour as their own.

The Court being cleared, they took into their consideration the evidence that had been produced from the ship, and what Captain Brereton had offered in his defence, and were unanimously of opinion, that he had done every thing in his power to bring the ship into action; but it appeared, that he had been intoxicated with liquor on the 26th and 27th of July last. The sentence being accordingly drawn up, and signed by the members of the Court, the audience were again admitted, and the prisoner called into Court, when the sentence was read by the Deputy Judge Advocate.

DANIEL FORBES.

(Deputy Judge Advocate.)

(COPY.)

GEO. JACKSON, D. S.

Received from the Admiralty Office, 13th November 1778.

At a COURT MARTIAL, held on board his Majesty's ship Queen, at Sea,
on Tuesday, the 25th of August, 1778.

P R E S E N T,

Sir Robert Harland, Bart. Vice Admiral of the Red, President;
Vice Admiral Sir Hugh Palliser, Bart.

Rear Admiral John Campbell,

Captain Joshua Rowley,
Robert Digby,
Alexander Hood,
Sir John Lindsay,
Joseph Peyton,

Captain Richard Edwards,
Sir John Ross, Bart.
Hon. Robert Boyle Walsingham,
Michael Clements,
John Laforey.

THE Court being duly sworn, proceeded, pursuant to an order from the Honourable Augustus Keppel, Admiral of the Blue, and Commander in Chief of a Squadron of his Majesty's ships, employed, and to be employed, in the Channel, Soundings, &c. to enquire into the conduct of Captain William Brereton, of his Majesty's ship the Duke, on the 27th of July last, when the fleet under Admiral Keppel were chasing and attacking the French fleet; which order was grounded upon Captain Brereton's letter to him, of the 24th instant, requesting the same might be done: and having examined the evidences produced from the ship, and maturely considered the same, as well as what

what Captain Brereton had to offer in his defence, the Court are of opinion, that every thing was done by Captain Brereton that was in his power, while the French fleet were in sight, to bring his ship into action. But it also appearing to the Court, that on the night of the 26th ultimo, before the action, and that of the 27th after it, he was much intoxicated with liquor, a situation highly unbecoming an Officer, and particularly at that time, they do therefore adjudge him to be dismissed from the command of his Majesty's ship the Duke, and he is hereby dismissed accordingly.

Given under our hands, on board his Majesty's ship Queen, at sea, the 25th day of August, 1778.

Robert Harland,
Hugh Palliser,
John Campbell.

Joshua Rowley,
R. Edwards,
Rob^t. Digby,
John Ross,
Alex^r. Hood,
R. B. Walsingham,
John Lindsay,
Mich^l. Clements,
Jos^h. Peyton,
Jn^o. Laforey.

DANIEL FORBES,

(Deputy Judge Advocate)

(A COPY.)

GEORGE JACKSON, D. S.

(C) 139 (C) A P P E N D I X
APPENDIX (D.)

**MINUTES of the TRIAL of Captain *William Brereton*,
at a Court Martial assembled on board his Majesty's
Ship *Elizabeth*, in *Fort St. George Road*, the 22d
June 1758, and continued every Day, *Sunday* ex-
cepted.**

By *George Pocock, Esq*; Vice Admiral of the White Squadron of his Ma-
jesty's fleet, and Commander in Chief of all his Majesty's ships and vessels
employed in the *East Indies*.

WHEREAS it appears to me, that during the engagement between his
Majesty's squadron under my command, and the squadron of the French
King, on the 29th April last, you did not continue in battle with his
Majesty's ship *Cumberland*, under your command, but did withdraw, or keep
back; and did not do your utmost to take and destroy the ships of the French
King, which it was your duty to have engaged, and to assist such of his
Majesty's ships as were engaged in fight with the French ships, which it
was your duty to have assisted; in express disobedience to the signal for
a closer engagement, which was made on board the *Yarmouth* soon after
the signal for battle, and repeated on board the *Queenborough*, and con-
tinued flying until the French ships had bore away, and broke their line; I
have therefore thought it absolutely necessary to suspend you from the com-
mand of his Majesty's ship *Cumberland*, till your conduct is enquired
into at a Court Martial; and you are hereby suspended accordingly, and
strictly commanded and required to remain on board his Majesty's said ship
Cumberland, till the time of your trial; for which this shall be your order.

Given under my hand, on board his Majesty's ship *Yarmouth*, in
Madras Road, the 7 *June, 1758*.

GEO. POCKOCK.

To Captain *William Brereton*, Commander of his
Majesty's ship *Cumberland* for the time being.

By command of the Admiral,

JN^o MICHIE.

S I R,

S I R,

Yarmouth, in Madrafs Road, the 8th June, 1758.

Vice Admiral Pocock having thought proper to order you to be tried at a Court Martial, on board his Majesty's ship Elizabeth, on Monday next, the 12th instant, to begin at seven o'clock in the morning, and appointed me to officiate as Deputy Judge Advocate; I have, in performance of my duty, recited the charge exhibited against you, in order that you may be prepared for your defence, viz. "That during the engagement between his Majesty's Squadron under the command of Vice Admiral Pocock, and the Squadron of the French King, on the 29th April last, you did not continue in battle with his Majesty's ship Cumberland, but did withdraw, or keep back; and did not do your utmost to take or destroy the ships of the French King, which it was your duty to have engaged, and to assist such of his Majesty's ships as were engaged in fight with the French ships, which it was your duty to have assisted; in express disobedience to the signal for a closer engagement, which was made on board the Yarmouth soon after the signal for battle, and repeated on board the Queenborough, and continued flying till after the French ships had bore away, and broke their line." I desire you will send me the names of the persons you intend to bring as evidences in your defence, that they may be summoned to attend; and inform me whether you will be ready for your trial by Monday morning next. I am, Sir,

Your most obedient, humble servant,

JN^o MICHIE.

To Captain William Brereton, of his
Majesty's ship Cumberland.

S I R,

I received your letter, acquainting me that the Admiral had ordered me to be tried by a Court Martial, on board the Elizabeth, on Monday next; I think it necessary, to prove some facts, that the survey on the gunner's stores should be taken before my trial comes on, therefore desire you will apply to the Admiral for the same.

The Gentlemen who I think necessary to call in my defence, are, viz.

Mr. Bulteel	—	—	Lieutenant	} Belonging to the Cumberland.
Mr. Daniel	—	—	Ditto.	
Mr. Rich	—	—	Ditto.	
Mr. Lewis	—	—	Ditto.	
Mr. Bruce	—	—	Master.	
Mr. Moulden,	—	—	Gunner.	
Mr. Shapter,	—	—	Mate.	
Mr. Grant,	—	—	Midshipman.	
Mr. Ellerker,	—	—	Ditto.	
Stew ^d Wilkinson,	—	—	Boat ^d Mate.	

John

John Grey, } Quarter Masters. } Belonging to the Cumberland.
 And^w. Monack, }
 William Jelley, Corporal. }
 Mr. Duff, Lieutenant of Marines, of the Queenborough.
 Mr. Fergusson, } Yarmouth.
 Mr. Spencer, }
 Capt. Creighton, } Protector.
 Mr. Elphinston, }

I am,

Cumberland,
 June 8th, 1758.

SIR,

Your most humble servant,
 W. BRERETON.

To Mr. Michie, Judge Advocate.

SIR,

Yarmouth, in Madras Road, 8th June, 1758.

An order for a survey on your Gunner's stores was delivered to one of your Lieutenants by Captain Harrison yesterday; but in case of that being any hinderance to your trial, the Admiral commands me to acquaint you, that he has put it off till after Captain Vincent's trial, and to desire you would send me the names of such persons, belonging to the Cumberland, as can give any account of Captain Vincent's behaviour, or the situation of the Weymouth, during the time of the action with the French squadron, on the 29th of April last. I am,

SIR,

Your most obedient
 Humble servant,
 JNO. MICHIE.

To Capt. William Brereton,
 Cumberland.

SIR,

Cumberland, 8th June, 1758.

I understand that I have been accused by the ships astern of me, of being an impediment to their coming into the engagement; I doubt not in the least of making it appear, during the course of my evidences, that I could be no hinderance; therefore, beg the Admiral will indulge me with bringing on my trial the first, as he intended, as I shall be ready by Monday morning to attend the Court. I am,

SIR,

To Mr. John Michie,
 Deputy Judge Advocate.

Your most humble servant,
 W. BRERETON.

SIR,

I have presented your letter to the Admiral, desiring that your trial may come on the first; but he commands me to acquaint you, that he has now fixed Monday for Captain Vincent's trial, and given orders for that purpose to the President, therefore cannot alter it. It will be attended with no bad consequence to you, as such of your Officers, or men, who can say any thing with regard

regard to your being no impediment to Captain Vincent's coming down to engage the enemy properly, will be ordered to attend his trial, therefore please to send me their names. I am,

Yarmouth, 8th June, 1758.

Capt. Brereton, Cumberland.

SIR,

Your most humble Servant,

JN^o MICHIE.

SIR,

Cumberland, 8th June, 1758.

I received your letter, acquainting me that the Admiral had now fixed Monday for Captain Vincent's Court Martial, and that, as he had given orders to the President to that purpose, it could not be altered; I must intreat that you will mention my humble opinion to the Admiral, that some difficulties appear to me from not being tried first, and which must prolong the time of the Courts Martial.

I am the person accused by them; I do not accuse them: therefore, I am very humbly of opinion, that, if my trial was brought on the first, it would appear to the Court, that the ship ahead of each other could be of no impediment to the one astern advancing: besides, I don't see how I can with any degree of justice send people to defend a cause, before I am publicly accused at a Court Martial.

It appears to me, that if a person is tried at a Court Martial, he must either be convicted of the charge against him, or cleared, before the Court can sit upon any other; and though it may not appear from the evidences at that Court, yet it may be proved afterwards, that the ship ahead of him could be of no impediment to his going where he pleased, as he was the sternmost ship.

I do not know whether a person can be tried twice for the same cause; but, if he can, and it should appear afterwards, that the ships ahead could be no impediment to his going down, it consequently must bring on another enquiry, and prolong the Courts Martial.

But I entirely submit these considerations to the Admiral's determination; but beg leave to observe, that, if he is determined to bring on Captain Vincent's trial first, that the Officers of this ship, as well as myself, should be there, to prove, that the Cumberland could not be any impediment to Captain Vincent's going down properly. I am,

SIR,

Your most humble servant,

W. BRERETON.

To Mr. John Michie,
Deputy Judge Advocate.

SIR,

Yarmouth, Madras Road, 9th June, 1758.

I have received your letters of yesterday's date, wherein you mention it as your opinion, that some difficulties appear to you from Captain Vincent's being tried first, and that the Officers of the Cumberland, as well as yourself, ought to be present at Captain Vincent's trial. The Admiral does not perceive that it can make any material difference, which of you is tried first; and

with

with regard to you and your Officers being present, he has no objection, but will give orders for that purpose, as you, no doubt, have a right, in the present case, to put what questions you please to any evidence on Captain Vincent's trial, that the Court may judge to be proper. I am,

Captain William Brereton,
Cumberland.

S I R,
Your most humble servant,
JN^o. MICHIE.

I have sent you the copies of your letters yesterday.

S I R, Cumberland, 9th June, 1758.

As nothing can be more shocking to a guilty conscience, than the approach of conviction, so nothing can be more terrible to an innocent one, than laying under censure; it is from this consideration, Sir! that I most earnestly intreat you will not alter your first resolution, of trying me the first; in doing which, you will greatly oblige,

S I R,
Your most obedient
Humble servant,
To George Pocock, Esq; &c. &c. W. BRERETON.

S I R, Cumberland, 12 June, 1758.

As I think it necessary, to prove some facts, in my defence at my trial, to have the evidence of the following persons belonging to the Cumberland, I beg the favour you will please to summons them accordingly. I am,

S I R,
To Mr. John Michie, Your most humble servant,
Deputy Judge Advocate. W. BRERETON.

Mr. John Clark,	—	Mate.
John Badge,	—	Ditto.
Thomas Smith,	—	Midshipman.
James Ferguson,	—	Ditto.
William Smith,	—	Seaman.

S I R, Yarmouth, 21st June, 1758.

I am commanded by the Admiral to acquaint you, that your trial will begin to-morrow morning, at seven o'clock, on board the Elizabeth; and at the same time hereby to signify the Admiral's directions to Lieutenant Bulteel, to order such persons as you think proper, belonging to the Cumberland, to attend as evidences in support of your defence; a list of whom you will please to send me some time this forenoon. I am,

S I R,
Captain William Brereton, Your most obedient servant,
Cumberland. JN^o. MICHIE.

S I R,

SIR,

Cumberland, 21st June, 1758.

I now send you a list of the persons I think necessary to support my defence; and am,

SIR,

Your most humble servant,

W. BRERETON.

Mr. Bulteel.

Daniel.

Rich.

Lewis.

Bruce.

Moulden.

Shapter.

Grant.

Ellerker.

Wilkinson.

John Grey.

Andrew Monack.

William Smith.

To Mr. John Michie, Deputy Judge Advocate.

MINUTES of the TRIAL of Captain WILLIAM BRERETON,

At a Court Martial assembled on board his Majesty's Ship Elizabeth, in Fort St. George Road, the 22d June 1758, and continued every day, Sunday excepted.

P R E S E N T,

Charles Steevens, Esq; President.

M E M B E R S:

Captain Thomas Latham,

Captain John Harrisson,

Captain Richard Kempenfelt,

Captain John Stuckly Somerset.

CAPTAIN Brereton brought into Court by the Deputy Martial, and audience admitted; the order for the trial read as follows:

By George Pocock, Esq; Vice Admiral of the White Squadron of his Majesty's fleet, and Commander in Chief of all his Majesty's ships and vessels employed in the East Indies.

WHEREAS it appears to me, that Captain William Brereton, of his Majesty's ship *Queenborough*, (who, in the absence of Captain William Martin, commanded his Majesty's ship *Cumberland*, by my order dated the 29th of March last) during the engagement between his Majesty's squadron under my command, and the squadron of the French King, on the 29th of April last, did not continue in battle with his Majesty's ship *Cumberland*, but did withdraw or keep back; and did not do his utmost to take or destroy the ships of the French King, which it was his duty to have engaged, and to assist such of his Majesty's ships as were engaged in fight with the French ships, which it was his duty to have assisted; in express disobedience to the signal for a closer engagement, which was made on board the *Yarmouth* soon after the signal for battle, and repeated on board the *Queenborough*, and continued flying till after the French ships bore away and broke their line:

I therefore think it absolutely necessary that Captain Brereton's behaviour should be enquired into at a Court Martial.

But whereas, by an Act of Parliament, passed in the twenty-second year of the reign of his Majesty King George the Second, intituled, "An Act for amending, explaining, and reducing into one Act of Parliament, the laws relating to the government of his Majesty's ships, vessels, and forces by sea," it is enacted and declared, That no Commander in Chief of any fleet, or detachment thereof, consisting of more than five ships, shall preside at any Court Martial in foreign parts; but that the next in command to such Officer commanding in chief, shall hold such Court Martial, and preside thereat, any law, custom, or usage, to the contrary notwithstanding.

You are therefore hereby required and directed to assemble a Court Martial on board his Majesty's ship *Elizabeth*, on Thursday next the 22d instant, and preside thereat, and proceed to enquire into the behaviour of Captain William Brereton, from the time I bore down, in the *Yarmouth*, on the French commanding ship, until the said engagement was over, and to try him for the same. You will herewith receive a copy of my letter to Captain Brereton, desiring his reasons for his conduct, with his answer, for your information. You are to send me the whole proceedings of the Court Martial, with the sentence or judgment passed therein; for which this shall be your warrant. Dated on board his Majesty's ship *Yarmouth*, in *Madras Road*, the 21st of June, 1758.

GEO. POCKOCK.

To Charles Stevens, Commodore, &c.

By Command of the Admiral,
Jⁿ MICHIE.

The

The Court, and Judge Advocate, being sworn, according to Act of Parliament, the two following letters were read, as follows :

“ S I R, Yarmouth, off Sadrafs, 3d May, 1758.

“ Your not complying with the signal for a closer engagement, with the ship that fell to your lot, in the late action with the French squadron, on the 29th of last month, makes it necessary for me to be informed in writing of your reasons for so doing. I am,

“ S I R,

“ Your most humble servant,

“ Captain William Brereton,
Cumberland.”

“ G. POCOCK.”

“ S I R,

“ I received your letter on his Majesty's service, directing me to acquaint you with my reasons for not coming to a nearer engagement with the French.

“ I shall proceed to give you an account of my conduct throughout the whole action, beginning from the time you bore down on the French Admiral: as my watch did not go, I cannot speak positively as to time, but I believe it was something before three. I observed you bearing right down on the French Admiral, on which I ordered the helm to be put a weather (at that time having the foresail, topsails, topgallant sails, and stay sails, set) I ordered that the main and mizen topsails should be kept shivering, and hauled the mizen up, and mizen stay sail down: when the ship fell off so as to get the wind abaft the beam, she run against her helm, till we got into your wake, and fearing I should not be able to get down nearer the enemy, without running under your lee, I thought it was prudent (as I was so near you) to shorten sail and bring to; on which I hauled the foresail up, took in the topgallant sails, and hauled down the stay sails, laying the main and mizen topsails aback, and soon after all aback, in hopes to wear clear of you; I had not lain in this position long, before I was hailed by the Newcastle, to make sail up to you; I looked aft, and saw she was close up to our stern, on which I filled, and let fall the foresail, in hopes to wear clear of you, but she only run up close to you, without falling off above two points; this obliged me again to back: soon after, the people told me we should be foul of the ship astern. I immediately run into the stern gallery, and hailed the ship to lay all aback, but could get no answer from her, as she had her foresail set, and shooting up to us: I thought it was necessary to fill, to avoid being on board her; this soon brought me so near to you, that I never had it in my power to get down on the enemy so near as I intended. Some time after, you sent a boat on board to me, to tell me to go ahead, I immediately made sail, and passed you, and fired several shot to rake one of the enemy, as they were bearing away, but fearing they did no execution, I ceased firing. About half an hour after five you hauled down the signal for engaging, on which I brought to.

“ These, Sir, are my reasons for not getting to a nearer engagement with the enemy;

enemy; and I believe, Sir, if you will enquire of any body who has served in the Cumberland, they will inform you she is extremely difficult to wear; indeed I have often thought it very necessary (at sea) to tack, when you have made the signal to wear, to prevent my being too far to leeward.

"I hope, Sir, these reasons will make it appear to you my endeavours have not been wanting.

"I am, Sir, with great respect,

"Your most obedient humble servant,

"Cumberland, 4th May, 1758.

"W. BRERETON."

"To Geo. Pocock, Esq; &c. &c. &c."

The Court then ordered all the evidences to withdraw.

Witness called.

Mr. William Ferguson, naval store-keeper, sworn.

Q. Where was you quartered, on board the Yarmouth, the 29th of April last, the day of action?

A. To observe signals.

Q. Please to relate to the Court the time all the signals you minuted down were made.

The evidence desired to have leave to look at his minutes.

Q. When were those minutes taken; and were they taken by yourself?

A. Between the time of the Admiral bearing down, and the engagement being over: they were taken by myself.

On which the Court gave him leave to make use of them.

He reads:—about four minutes before three, we made the signal to engage, and about three minutes after three, the signal for a closer engagement: about eight minutes after three, we made the Weymouth's and Newcastle's signal; at nine minutes after four, we made the Cumberland's, Newcastle's, and Weymouth's signals; at twenty-seven minutes past four, we hauled down the signal for the line, and made the signal to chase. These are all the signals that were made within the time.

Q. At what time was the signal for battle, and a closer engagement, hauled down?

A. At five o'clock.

Q. At what time was the signal for chasing hauled down?

A. About a quarter of an hour after 'twas hoisted.

Q. Did you, at any time during the action, make any observations of the Cumberland; if you did, at what time?

A. I saw the Cumberland twice, the first time was a little time after the Admiral began to engage, perhaps about a quarter of an hour; I did not then take any particular notice, only that she was upon our weather quarter, and seemed to me to be going down to the enemy, under sail, less than two cables length distance, as I think, from the Yarmouth.

Q. Did you observe what sail she had set at that time?

A. I can't say. The second time I saw her was about half past four of the clock, then she was a little to windward of the line; she was nearer than the

the first time I saw her; she was not engaging the enemy at that time. This was at the time when Mr. Fenshaw was going on board of her. I know nothing more.

Q. The first time that you saw the Cumberland, how was she situated with regard to the two ships astern of her; Was she to windward, or to leeward, or right ahead of them?

A. The ship next to her appeared to be on her weather quarter, and the other to be rather on her larboard quarter; the ship which was on her larboard quarter, I took to be the Weymouth: she was then a firing.

Prisoner asked.

Q. Do you remember that the Cumberland's signal was made during the action?

A. It was made at the time I have already mentioned in my former evidence.

Q. Do you remember, at any time during the action, to see a ship very close to the Admiral's stern?

A. No closer than what I have related already.

Mr. John Stephenson, Boatswain of the Yarmouth, sworn.

Q. Mr. Stephenson, where was you quartered, on board the Yarmouth, the 29th of April, the day of action?

A. Upon the forecastle.

Q. Did you at any time, from the Admiral's bearing down to engage the enemy, to the time the engagement was over, observe the Cumberland; if you did, at what time was it, and what did you observe of her; how was she situated with regard to the Yarmouth, and the ships astern of the Cumberland?

A. As we bore down to the enemy in the Yarmouth, I saw the Cumberland, Newcastle, and Weymouth, astern of us at some distance, and to windward withal of the Yarmouth: when I first took notice of the Cumberland, I supposed her to be about a mile astern of us; a short time after that we began to engage the enemy, and I took very little notice of the Cumberland afterwards, till the enemy began to cease firing, and was bearing away, then I looked to see where the ships astern was; I observed the Cumberland a little upon our weather quarter, and astern withal three quarters of a mile distance, about two points on the quarter, as near as I can guess; she had her courses hauled up, and her main-topfail sometimes shivering and sometimes aback. I then swore two or three oaths, and said, What does that ship do out of the line, upon our weather quarter? After that, I see a boat come from alongside of her, that went from the Yarmouth: soon after she let fall her foresail, and filled her main and mizen topfails, and shoot alongside of us, and fired one or two of the bow guns; she afterwards shoot ahead of us, and fired several guns, some of which I saw fall short, and some might strike the enemy's ships, I believe, then I saw the enemy break the line, and was in great confusion; they then bore all away.

Q. How was the rear of the French line situated, with regard to the ships that the Yarmouth engaged, the two different times that you saw the Cumberland?

A. The

A. The first time I saw her, the rear of the French was in a regular line altern of their Admiral, about half a mile distance one from another, as near as I can judge, laying to; they kept closing their line, till they were within a cable length of each other, or a little more than half a cable length distance; to the best of my knowledge they continued so till the French Admiral began to bear away; then it appeared to me that the whole fleet had broke the line, the sternmost being abreast of the Yarmouth at that time; and it appeared to me the French ships were making the best of their way, and we received their fire on board the Yarmouth, from every one of them as they passed us.

Q. When you first observed the Cumberland, which was just before the Yarmouth brought up to engage, what sail had she set, and how was she steering?

A. She seemed to be edging down; when I first saw her, she was bearing down after us; had her topgallant sails set, foresail, jibb, and most of her staysails: a little before we began to engage, I observed the Cumberland to have her topgallant sails handed, foresail up, and jibb and staysails down; and when I saw her with those sails set, we was bearing down upon the enemy.

Just as we brought up, she was about three quarters of a mile distance from the Yarmouth, and broad upon our weather quarter, with her main topsail sometimes shivering, and sometimes a-back, and mizen topsail likewise.

Q. When you first brought up and engaged, how was the French Admiral situated from you, and what other ships had you firing upon you?

A. When the Yarmouth first began to engage, the French began to fire first; to the best of my knowledge, the French Admiral was then just abreast of us, about a cable's length or something more; in a very short time we got very near the French Admiral, and the ship astern of him seemed to be abreast of us: there was two ships firing upon the Yarmouth, besides the French Admiral, very close to each other.

Prisoner asks.

Q. You say, that just as the Yarmouth brought up to engage, you saw the Cumberland had hauled up her foresail, handed her topgallant sails, and hauled down her staysails, and that she was three quarters of a mile distance; Do you speak this by guess, or do you speak positive upon your oath?

A. To the best of my knowledge, and as near as I can recollect, I declare upon oath these things I have said are true.

Q. You have said, that soon after the boat, which was sent from the Admiral, had put off again from the Cumberland, she set her foresail; Can you say that the foresail was not set before the boat put off from the Cumberland?

A. To the best of my remembrance, the foresail was not set before the boat put off from the Cumberland.

Mr. Archibald Chambers, Master of the Yarmouth, sworn.

Q. Where was you quartered, on board the Yarmouth, the 29th of April last, the day of action?

A. On

A. On the quarter-deck.

Q. Please to relate to the Court, what you observed on board the Yarmouth, of the Cumberland, from the time the Admiral bore down to engage the French fleet, to the time the engagement ended.

A. From the first time of my making any observations with regard to the Cumberland, (it may be about twenty minutes after the signal for battle) I observed she was never in a line with the Yarmouth, but on the Yarmouth's weather quarter, about two points, as near as I could guess; standing upon our quarter-deck, and about two cables length distance, I observed from that time, during the action, that the Cumberland never obeyed the signal for a closer engagement; but from that time, till the French Admiral bore away, increased her distance from the Yarmouth, and from the enemy: during the action, I never observed the Cumberland to come up to the assistance of the Yarmouth, though at the same time I thought, that every person could not help thinking she was in want of it, as during the action she had never less than two ships upon her. I observed the Cumberland made sail, just at the going on board of Mr. Fenshaw, and came up as fast as could be expected; and I really believe, that if the French rear had been in the same situation as they were in during the action, that the Cumberland might have gone down as close as the Commander had pleased to the French ship that was astern of the French Admiral's second, without running any risk of being aboard the Yarmouth; for the French Admiral's second was at that time on the Yarmouth's quarter. My reason for saying that I think it was in the Cumberland's power to have bore down, is, as soon as she shoot ahead of us half the distance she was from the Yarmouth during the action, she bore away, and, to the best of my knowledge, pointed at the enemy, which was then going away large, up to the enemy's ship that was astern of the French Admiral's second. A little after four, the Cumberland, Weymouth, and Newcastle signals was made; Mr. Fenshaw was then sent on board: he found, when he went on board the Cumberland, she had stern-way; he endeavoured to lay her on board at the gang-way, but she having stern-way, he fell on board at the bow.

Q. Relate to the Court what sails the Cumberland had set, from the time of your first seeing her, to the time of Mr. Fenshaw's going on board.

A. At the time I looked first, and at every time, to that of Mr. Fenshaw's going on board, I never observed her to have any thing but her topsails set, and always one or more of them aback; and I looked several times, but cannot say how often, and was very anxious for her to come up.

Q. During the action, did the Yarmouth lay to, or had she steerage way; If she had steerage way, how much do you think she might go?

A. Ever after we got properly in our station, alongside of the French Admiral, to the best of my knowledge, the Yarmouth had steerage way the whole time; but how fast she went is impossible for me to tell, as we had different sails set.

Q. Can you recollect, at that time you observed the Cumberland, which was soon after the signal for engaging was made, or at any other time during the action, any thing you observed of the Newcastle and Weymouth, which was astern of the Cumberland; how they were situated with regard to the Cumberland?

A. I took very little notice of the other two ships at the same time I observed the Cumberland, only they were in a huddle together, and for the most part, I thought they were very close up to her.

Q. What do you know relating to the rear of the French line, from the time we began to engage; their situation from each other, from the Cumberland, and from the Yarmouth, during the time the Yarmouth was engaged?

A. The time that I made them remarks, twenty minutes after the signal for battle, the French Admiral was a little before the Yarmouth's beam; the second astern was about half a musket shot astern, and appeared to be a little to leeward; next to him, just open with his stern, the frigate; and the sternmost of the French line astern of him, and a greater distance from the frigate than the other ships were from one another. The next time I observed the French rear, was about ten minutes after; then I observed the frigate had gone from between the two sternmost ships, and that she had quitted the line; that the sternmost ships had closed up more; and after their Admiral bore away, they made sail, came up, and gave us their fire as they passed us?

Q. When the Yarmouth began first to engage, what ship was it, and at what distance was the ship she engaged with?

A. When we bore down, we steered for the French Admiral's second ahead, for fear of falling in astern of the French Admiral, and engaged about half a musket shot distance; at the same time the French Admiral's second astern fired at us, and the shot fell over us, and under the Elizabeth's stern.

Q. At the first time you observed the Cumberland, did you observe the French rear; and how was the Cumberland situated from them, and at what distance?

A. I can't say which she was nearest, but I believe it was the ship astern of the frigate; I cannot say as to the distance, but it appeared to me that the frigate, or the ship next astern of her, was nearest.

Prisoner asks.

Q. When you left the Cumberland, did not you give the Master that succeeded you, the character of the ship as to her working? If you did, please to relate it to the Court.

A. I don't remember that ever I particularly related it, or that ever he asked me.

Q. Did you look constantly on the Cumberland during the action, or at times; if at times, how many times did you look at her?

A. I did not look constantly at her, but at times: I can't remember the number of times.

Q. Might not the Cumberland have made sail, and close the Admiral, when you did not look at her?

A. She might so, but it never appeared to me that she did.

Q. Did not the Yarmouth, during the action, often make sail to keep up with the French Admiral?

A. We filled the mizen topsail, hauled the mizen out, over-hauled the fore buntlines and lee lines, set the foresail; but never made more sail than that.

Q. Did

Q. Did you observe, when the Cumberland fired the guns, after she had passed the Yarmouth, whether they were fired from her bow-chase or broadside?

A. I observed her to fire, but cannot say what guns.

Sir George Hume, Midshipman of the Yarmouth, sworn.

Q. Sir George, where was you quartered, on board the Yarmouth, the 29th of April last, the day of action?

A. To pass the word.

Q. Please to relate to the Court what you know relating to the Cumberland, from the time of the Yarmouth bearing down to engage the French squadron, to the time of the action being over.

A. When the Admiral bore down to engage, the Cumberland was in her station astern of us, with her top-gallant sails furled, and three topsails to the mast, and continued to lay so for ten minutes before she offered to fill; and when the signal was made for a closer engagement, she did not make any more sail; and always, when I saw her, she was upon our weather quarter, with only her three topsails set, and, as it appeared to me, her main topsail always to the mast; and that is all I know of it. I know nothing particular farther of her during the action.

Q. At the time you did see the Cumberland, how much was she on the Admiral's weather quarter, and at what distance?

A. About two points on her weather quarter, and one mile distance.

Q. When the signal was made for a closer engagement, had the Cumberland brought up?

A. She appeared to me to have her main topsail to the mast.

Q. Did you see the Cumberland bear away, after that ten minutes were expired?

A. She was filling her fore topsail.

Q. Were the times you saw the Cumberland, at the beginning of the action, or at what time?

A. At different times.

Q. Was there no remarkable difference in the Cumberland's situation with the Yarmouth, at the several times you observed her?

A. None, that I could observe.

Mr. John Spencer, Midshipman of the Yarmouth, sworn.

Q. Where was you quartered, on board the Yarmouth, the 29th of April last, the day of action?

A. To observe signals.

Q. Please to relate to the Court, what signals were made on board the Yarmouth during the action, and what time they were made.

A. I can't be positive as to the time the signals were made; but Mr. Ferguson had a watch in his hand, and took them down.

Q. Relate to the Court what signals were made.

A. The general signal, the signal for the line of battle, &c.—The signal for battle was made ten minutes before three, the signal to engage closer five minutes

minutes after three: a little before the signal for battle, the Weymouth and Newcastle's signals were made; soon after the French Admiral bore away, the Cumberland, Newcastle, and Weymouth signals were made; half an hour after four the general signal to chase to the N. E. was made; the signal for battle and a closer engagement was out during the whole action.

Q. What do you know relating to the Cumberland, from the time of the Admiral's bearing away, to the end of the action?

A. At the beginning of the engagement I took notice of the Cumberland; she was on our weather quarter, about the distance of two cables length, or rather more; I did not observe that she had brought up at the time the signal for a closer engagement was made: the Cumberland was on our weather quarter, with her main topsail aback, about two cables length distance; afterwards I perceived her with her three topsails aback. Soon after the French Admiral bore away, I saw a ship, which I took to be the Cumberland, nearer the Yarmouth than when I saw her before. I also observed it before the French Admiral bore away, and at that time I thought she was engaging the French Admiral's second, and she was upon our weather quarter, about a cable and a half distant; and I saw her engaged before that, when she had her three topsails aback, either with the French Admiral's second or the ship astern of him, in which position she was when Mr. Fenshaw went on board of her. Then I observed her make sail, and run ahead of the Yarmouth.

Q. Please to relate to the Court, the situation of the French rear at the time the Admiral brought up to engage.

A. At the time the Yarmouth brought up to engage, and about the time the signal was made for a closer engagement, the French rear was in a regular line, astern of their Admiral, and the French Admiral's second was upon her weather quarter.

Q. Did you at no time, after the signal for a closer engagement was made, observe the Cumberland endeavour to wear, and get nearer the enemy?

A. At the times that I looked at her I did not observe that she did; but by observing her so near, the latter part of the action, made me conclude that she had.

Mr. James Glasford, Midshipman of the Yarmouth, sworn.

Q. Where was you quartered, on board the Yarmouth, on the 29th of April, the day of action?

A. To pass the word.

Q. Please to relate to the Court what you know of the Cumberland, from the time the Admiral bore down to engage the enemy, to the time the engagement ended.

A. I don't know as I ever saw her in a line with the Admiral during the action; she was always, when I observed her, on the weather quarter, and about a cable and a half distance at the farthest. When I saw her first, 'twas before the engagement began; and her nearest distance was about half a cable from the Yarmouth, which was about the middle of the action, with her main or fore topsail aback, I cannot justly say which; and she continued so

till Mr. Fenshaw went on board, and then she was rather upon our weather quarter: she made sail after Mr. Fenshaw was on board. I took no further notice of her.

Q. During the time of the action, did you observe the position of the French rear with their commanding ship?

A. I can't say I did.

Q. Did you never, after the signal for closer action, observe the Cumberland to bear down nearer the enemy?

A. I did not observe whether she did or not.

Q. Did you in the time of the action see the Cumberland engage; if you did, what ship did she engage with?

A. I can't say whether she did or not.

Mr. Robert Fenshaw, Midshipman of the Yarmouth, sworn.

Q. Where was you quartered, on board the Yarmouth, the 29th of April last, the day of action?

A. To pass the word.

Q. Do you know any thing particular relating to the Cumberland, during the time of the engagement?

A. Soon after the Yarmouth bore down, I took notice of the Cumberland filling her fore topsail; immediately after it filled it shivered again: I took no further notice of her till I went to the mast-head, to make the signal for a closer engagement: I saw her engage during the whole time I was there, which was a quarter of an hour; I believe she was engaged with the second ship astern of the French Admiral: the Cumberland was then upon the Yarmouth's weather quarter, at near two cables length distance. I took no further notice till I was ordered aboard with a message to Captain Brereton, from the Admiral, to make sail and engage any ship he could: when I came alongside of her, she was filling her fore and mizen topsails, which lay before aback, and setting her foresail. When I delivered the order to Captain Brereton, he told me, Very well; and desired me to tell the Admiral his orders should be obeyed; and desired me to acquaint the Admiral, that the Cumberland was weakly manned. I then put off, and came on board the Yarmouth: the Cumberland was then upon the Yarmouth's weather quarter.

Q. At the time you put off from the Yarmouth, how was the French rear situated?

A. When I put off from the Yarmouth, the sternmost of the French rear was upon the Yarmouth's lee quarter, edging away; I saw a good deal of smoke about her, but what ship she was firing at I can't tell.

Q. At the time you was on board the Cumberland, how was the Newcastle and Weymouth situated?

A. The Newcastle was upon the Cumberland's weather quarter, and the Weymouth astern of the Newcastle.

Lieutenant Thomas Humphris, of the Newcastle, sworn.

Q. Where was you quartered, on board the Newcastle, the 29th of April last, the day of action?

A. Upon

A. Upon the upper deck.

Q. Please to relate to the Court what you know with regard to the Cumberland, from the time the Admiral bore down to engage the French Squadron, to the time the engagement ended.

A. I can't pretend to relate a narrative of the Cumberland's behaviour during the action, but am ready to answer any question, as far as I know, that the Court shall think proper to ask.

Q. At what time of the action did you see the Cumberland?

A. I saw her about half past three, bearing down before the wind with her topgallant sails set, and foresail; I did not take any notice of any other sails. I did not see her till a quarter of an hour afterwards; then I was called up to hail her: she was then laying, I believe, most of her sails aback; her main and mizen topails were aback. I hailed her several times, but had no answer; it was about three quarters after three; we and the Cumberland were firing at the French Admiral's second aftern, and the Newcastle firing at the second ship from the French Admiral.

Q. At half past three, when you saw the Cumberland bearing down, how was she situated with the Weymouth and Newcastle?

A. She was broad upon the Newcastle's starboard bow when the Newcastle brought up, which was about the time I saw her, at the distance of four or five cables length, and the Weymouth was then upon the Newcastle's starboard quarter, near aftern; we was then right in the Admiral's wake.

Q. At half past three, when the Newcastle brought up, how was she situated with regard to the Yarmouth?

A. The Yarmouth was right ahead, or rather on the starboard bow, about three cables length distance.

Q. When did you see the Cumberland afterwards, and how was she situated with respect to the Yarmouth?

A. Not long after, when the Weymouth shoot a-head of the Newcastle, then I was called up again; I don't remember that I took any notice of the Yarmouth at that time.

Q. Was the Cumberland firing at this time?

A. She was firing.

Q. How was the Cumberland situated with the Newcastle at this time?

A. She was upon our starboard bow.

Q. At this time you saw the Cumberland firing, how was the rear of the French line situated, and how far from the Cumberland?

A. The second ship in the French rear was a small matter before the Newcastle's beam; the sternmost in the rear was abaft the beam, about half a mile distance.

Q. Do you know whether the French Admiral's second aftern, was at that time aftern of the French Admiral?

A. I can't say I took any notice of him.

Q. Did you observe when the Cumberland bore away; how long was it after the Yarmouth bore away?

A. It was some time before she had any way through the water; her foresail, fore topgallant sail, and jibb was out; she began to wear the same time the Admiral did; her after-sails were square.

Q. You say you brought up in the Newcastle before the Cumberland did?

A. Yes we did, because we sailed better.

Prisoner asks.

Q. When you hailed the Cumberland to make sail up to the Admiral, did you observe the foresail was down?

A. Yes, I did observe it; her foresail appeared to me to be down; her topgallant sails were set, but I don't know whether they were upon the cap, or hoisted.

Q. Did not you, soon after you hailed the Cumberland, perceive that she had closed up with the Admiral?

A. I can't say I did perceive it.

Captain Colwill, of the Queenborough, sworn.

Q. Please to relate to the Court, what you know with regard to the Cumberland, from the time of the Yarmouth bearing down to engage the French Squadron, to the time the engagement ended.

A. I remember nothing particular relating to the Cumberland: when I was coming back from endeavouring to put the men on board the Tyger, I observed the Cumberland very warmly engaged; and, as well as I can remember, she continued so near half an hour, and then dropt astern. I did not take any particular notice after, till the general signal for chasing was made, then I saw her making sail ahead; at the time I saw her engaged, it was about a quarter of an hour after the Admiral engaged.

Q. Can you judge, when the Cumberland engaged, what distance she was from the Yarmouth?

A. About a cable length astern, and to windward withal.

Q. At the first time you made these observations, how was the Queenborough situated with the Yarmouth?

A. We were in our station; we were to windward, and abreast of the Admiral.

Q. How was the rear of the French Squadron situated at that time, with regard to their own Admiral?

A. We could only see that the French ships were ahead of one another, we could not tell whether they were to windward or to leeward of one another; much about that time there was three ships astern of the French Admiral, and a frigate, to the best of my knowledge, and seemed to be open with one another.

Mr. John Younghusband, Midshipman of the Queenborough, sworn.

Q. Where was you quartered, on board the Queenborough, the 29th of April last, the day of action?

A. To observe signals, Sir, on the quarter deck.

Q. Did you see the signal for the line of battle, for engaging the enemy, and for a closer engagement?

A. Yes, Sir, I did see them all.

Q. Do

Q. Do you recollect at what time you repeated those signals?

A. The time of repeating the signals for the line I do not remember; the signal for battle was repeated a little before three, and the signal for a closer engagement about ten minutes or a quarter of an hour after that.

Q. How long was the signal for the line and a closer engagement kept flying; and do you remember any other signals?

A. Yes, I remember a white pendant at the fore top-mast head, and a blue pendant at the fore top-mast head, and a white pendant at the main top-mast head; there might be more, but I don't remember them.

Q. During the time of the action, do you remember any thing particular relating to the Cumberland?

A. To the best of my remembrance, about ten minutes after the Admiral began to engage, the Cumberland was engaged with one of the ships astern of the French Admiral, very close to the enemy, and to leeward of the Admiral's wake.

Q. Did you observe when the Cumberland left off firing; and can you judge what might be the cause of it?

A. I can't say exactly; but she appeared to me to be very near the Admiral, and I thought she was on board of him.

Q. Can you tell how long the Cumberland continued with her topsails aback?

A. I do not know how long, but I soon saw her set her foresail, and run up to the Admiral again; then she hauled her foresail up, and laid one of her topsails aback; after that, I did not see her make any more sail, till the signal was made to chase, and she went ahead of the Admiral.

Q. When the Cumberland set her foresail, and shoot up with the Admiral, did she appear to be in the Admiral's wake?

A. Yes, she appeared to be in his wake.

Prisoner asks.

Q. You have said the Cumberland was very near the Admiral, and that you thought she was on board of him, and then laid all aback, and dropt astern, and some minutes after set her foresail, and run up to the Admiral again; Did you not then see the Cumberland engaged with some of the French ships?

A. Yes, I saw her fire some bow guns; but she did not appear to me to be so warmly engaged as the first time I saw her.

Q. *from the Court.*—During the time that you saw the Cumberland fire, did you observe the situation of the French rear, with regard to their own Admiral?

A. They appeared to me to be a little upon the lee-quarters of each other; I think there were three of them astern of the French Admiral.

At half past five the Court adjourned till eight on Friday morning.

Friday,

Friday, 23d June, 1758, the Court assembled according to adjournment.

Lieutenant Edward Stewart, of the Newcastle, sworn.

Q. Where was you quartered, on board the Newcastle, on the 29th of April last, the day of action?

A. Upon the upper deck.

Q. Relate to the Court what you know of the Cumberland, from the time the Admiral bore down to engage, to the time of the action being ended.

A. At the time Mr. Humphris hailed the Cumberland, which was about the middle of the action, she was then close to the Newcastle, upon her star-board bow; we was obliged to back the fore topsail, to prevent being on board her: I just saw her out of the port, and I was called away presently after, so had no time to take notice what sail she had set, or if she was firing or not: I never saw her after till the action was over.

Q. When the Newcastle was near the Cumberland, did you observe the Yarmouth; if you did, in what situation was the Newcastle from the Yarmouth, and at what distance?

A. I did not see the Yarmouth at that time.

Q. Did you observe the position of the French rear at this time?

A. Yes, Sir, I saw the two French sternmost ships, they were shooting ahead, under the lee of the French Admiral; they had their top-gallant sails and courses set; to the best of my knowledge, they were then upon the Newcastle's lee bow.

Prisoner asks.

Q. Was it not soon after Mr. Humphris hailed the Cumberland, that the Weymouth passed by the Newcastle, and found room to go in between the Newcastle and Cumberland?

A. I don't know, I did not see the Weymouth pass the Newcastle; some time after Mr. Humphris hailed the Cumberland, I saw the Weymouth upon the Newcastle's lee beam.

Mr. James Forguison, Boatswain of the Newcastle, sworn.

Q. Where was you quartered, on board the Newcastle, the 29th of April last, the day of action?

A. Upon the fore-castle.

Q. Relate to the Court what you know particularly of the Cumberland, from the time of the Admiral bearing down to engage the French squadron, to the time of the engagement ending.

A. The first time I observed the Cumberland, was when the Newcastle brought up to engage; the Cumberland was bearing down with her top-gallant sails set, and foresail, about two or three cables length distance upon the starboard-bow; then she brought to just ahead of us (or soon after) or almost ahead, so near that she engaged the ship that we should have engaged, which was the second ship in the French rear, astern of the French Admiral. The Cumberland engaged that ship, as near as I can guess, about fifteen minutes;

the Newcastle was firing with the foremost guns; at this time the Cumberland must have been within point-blank shot of the enemy. The next observation I made of the Cumberland, was when Mr. Humphris hailed her; upon his hailing, he received no answer, and I was surprized at it, as she was so near that a man might have hove a stone aboard of her. She was laying half a point upon our starboard bow, with her main topsail aback; I cannot be positive whether her mizen topsail was aback or not. She was then firing, but there was no ship upon her beam; but the French ships were then doubled in with their Admiral; she could hardly bring any but her bow guns to bear on them. I am not certain what time this was; it was before the Weymouth shoot ahead of the Newcastle, and at that time I did not see any thing to hinder the Newcastle and Weymouth from action, but the situation the Cumberland was in.

Q. At the time the Newcastle hailed the Cumberland, did you see the Yarmouth; if you did, what distance was the Cumberland from the Yarmouth, and in what position?

A. I don't recollect seeing the Yarmouth at that time; but at the time the Newcastle first brought up, she was about two cables length distance from the Yarmouth, right in a line, and the Cumberland brought up very near ahead of the Newcastle.

Q. When the Newcastle brought up, how was she with the Yarmouth?

A. Right astern, in a line, and about two cables length distance, or something less; I did not observe the Yarmouth, so as to be able to relate any thing of her situation or distance afterwards.

Q. You say, just before the Cumberland brought up, you was engaged with the second ship of the French rear; that fell to your lot; that the Cumberland coming down and engaging her, prevented your continuing the action with her; pray inform the Court how that happened.

A. At this time, when the Cumberland came down, the ship we engaged made sail, and the Cumberland being so near to us, took her off. The French ships at this time were edging away.

Q. After the Cumberland brought up, did you observe her sails?

A. Yes, I observed her main topsail aback, but am not certain whether her mizen topsail was aback or not, but I think it was.

Q. Was the Newcastle laying to at this time?

A. She was laying to.

Q. Did you observe whether the Cumberland encreased her distance from the Newcastle, whilst the Newcastle was laying to?

A. Not that I could observe, until the time the Weymouth was running between the Newcastle and Cumberland.

Q. After the Newcastle had ceased her firing, on account of the Cumberland engaging the ship opposed to her, did the Newcastle at any time enter into action again?

A. Yes, with the sternmost ship, as she was coming up, and bearing away, at the same time; we continued to fire at her, as long as we could bring any guns to bear on her.

Q. As the sternmost ship of the French rear was passing the Newcastle, what do you judge her nearest distance might be?

A. I ob-

A. I observed our shot went over her, and their shot went over us; but I cannot say whether we were within point-blank or not.

Prisoner asks.

Q. Was it not soon after Mr. Humphris hailed the Cumberland, that the Weymouth passed by the Newcastle, and found room to go in between the Newcastle and Cumberland?

A. As to the time I cannot be positive; it was afterwards, I believe, within half an hour.

Mr. Richard Holmes, acting Master of the Newcastle, sworn.

Q. Where was you quartered, on board the Newcastle, on the 29th of April last, the day of action?

A. At the time of the engagement, Sir, I was upon the quarter-deck.

Q. Relate to the Court what you know in particular of the Cumberland, from the time the Admiral bore down to engage the French squadron, to the time of the action being over.

A. The first time I came upon the quarter-deck, which was when the Newcastle first brought up to engage, seven or eight minutes after the Admiral began first to engage, she was broad upon the starboard bow, laying to; her main topsail was aback, and her fore topsail was full; she had her fore topmast stay-sail set, and was then better than two cables length distance: a short time after this, about five or six minutes, she was close upon our weather bow; she was so near, that Captain Legge ordered her to be hailed: we was then laying to, with the main topsail to the mast: the Yarmouth was then, as near as I can judge, about half a cable length from the Cumberland, pretty near in a line. I know nothing more particular, only, when the Weymouth hailed us, Mr. Humphris hailed the Cumberland again. This is all I know of her.

Q. When you did observe the Cumberland bring to, and began to engage, how long might she be engaged?

A. Really I don't know how long; it might be about ten minutes, as there was no ship for her to fire at longer.

Q. Did you observe the rear of the French squadron, from the time that you brought up to engage, to the time that the Cumberland left off firing? if you did, relate it to the Court.

A. When the Newcastle began to fire at the second ship of the French rear, I observed the rear of the French line pretty near in a line with their Admiral; there were three ships astern; they were about a cable and a half length asunder, and about half a mile from the Newcastle, a little before the beam. After we had fired two or three broadsides, the Cumberland came down, and began to engage: the sternmost of the French rear was bearing away, and the second ship began to bear away soon afterwards: whether the Cumberland fired at the second ship ahead of her, I cannot say.

Q. From the time that the Newcastle brought up to engage, how long do you think she might be engaged?

A. About a quarter of an hour, with the second ship in the French rear, but, to my knowledge, she never fired at any other ship.

Prisoner asks.

Q. When the Newcastle bore down on the enemy, did not the Newcastle bring to on the Cumberland's larboard quarter, fire your broadside, and then bear up again, and run into the line?

A. I don't remember it.

Q. Was it not soon after Mr. Humphris hailed the Cumberland, that the Weymouth passed by the Newcastle, and found room to go in between the Newcastle and Cumberland?

A. It was soon after, I believe about ten minutes after: we were obliged to back our topsails, for fear of being on board the Cumberland.

Q. *from the Court.*—During the time of the action, did you ever observe the Union flag hoisted at the Yarmouth or Queenborough's main topmast head, which was the signal for closer action; if you did, what time was it?

A. Yes, I did take notice of it, about the middle of the action, flying on board the Yarmouth and Queenborough, about ten minutes after the Newcastle had done firing. I saw it several times afterwards, but I don't know what time it was hauled down.

Mr. Stephen Raymond, Midshipman of the Newcastle, sworn.

Q. Where was you quartered, on board the Newcastle, the 29th of April last, the day of action?

A. To pass the word.

Q. Relate to the Court what you know particularly of the Cumberland, from the time the Admiral bore down to engage the French squadron, to the time the action was over.

A. When first we bore down, I took notice of the Cumberland, she was upon our starboard bow, and I never took notice of her upon our larboard bow, during the action. When the Newcastle brought up, I was sent down below, and when I came up again, the Cumberland was upon the starboard bow, I believe about half a cable length from us; we hailed the Cumberland once, and desired her to make sail up, and close the Admiral; we had no answer, but I observed her fill her main topsail while we were hailing her; it had been aback. I saw the Cumberland engage, but as I had no watch I can't tell how long, and the French squadron was then making off. We fired several guns off the quarter-deck, but could not reach the enemy: I believe our Admiral was then upon our larboard beam.

Lieutenant Carey, of the Weymouth, sworn.

Q. Where was you quartered, on board the Weymouth, the 29th of April last, the day of action?

A. On the upper deck.

Q. Relate to the Court what you particularly know of the Cumberland, from the time the Admiral bore down to engage the enemy, to the time of the action being over.

A. I never saw the Cumberland but once, and that was the time the Weymouth

mouth was near the Newcastle, which was about four o'clock; she was then astern of the Yarmouth, right astern; and that is all I know of her.

Prisoner asks.

Q. After the Weymouth hailed the Newcastle, to hail the Cumberland to make sail up to the Admiral, did not you run by the Newcastle, and go in between the Newcastle and Cumberland?

A. No, Sir.

Q. How long might it be after that time that the Weymouth passed the Newcastle?

A. Ten minutes.

Q. What distance did you observe betwixt the Newcastle and Cumberland when the Weymouth got between?

A. I can't be certain, I believe a cable and a half or two cables length.

Mr. Benjamin White, Master of the Weymouth, sworn.

Q. Where was you quartered, on board the Weymouth, the 29th of April last, the day of action?

A. On the quarter-deck.

Q. Relate to the Court what you know particularly relating to the Cumberland, from the time of the Admiral bearing away to engage the enemy, to the time of the action being over.

A. When the Admiral bore down to engage the enemy, the Cumberland also bore down. I saw her brought up, and began to engage, about twelve minutes after the Admiral began to engage; then, I think, the Yarmouth was to leeward of the Cumberland, about two cables length distance. The Cumberland continued firing about half an hour: when she first brought up, and at all the times I observed her, she was firing at the second ship from the French Admiral, at about half a mile distance; afterwards she came down nearer to the enemy: her distance from the enemy was variable, but mostly about a quarter of a mile from them. At the latter part of the action, the sternmost ships had shoot ahead; I judged the sternmost of the enemy's rear to be abreast, or rather abaft, of the Cumberland's beam. Just before they bore away, the Weymouth hailed the Cumberland to make more sail ahead; we were obliged to lay all aback, to keep clear of the Cumberland, I did not hear the answer; but was told the Cumberland could not make sail ahead, we must lay all aback. The Cumberland was then lying under her topsails, with her main topfail aback; I did not take any notice of the mizen topfail: the Yarmouth was then a little upon the Cumberland's lee bow, and about a cable and a half or two cables length distance from her.

Q. Was the Cumberland firing at that time?

A. She was firing at that time.

Q. During the time you observed the Cumberland, do you know the position of the French line with regard to their Admiral?

A. When the French Admiral first brought up to engage, there was four ships astern of the French Admiral, in a line, about a cable length asunder; soon

soon after the frigate quitted the line, and the sternmost of the enemy's ships began to close the center, to about half a cable length distance; I observed the sternmost of the French rear were to leeward of their Admiral, edging away; the French rear edging away before the French Admiral bore away. This is all I know.

Q. Did you observe, at any time during the action, the Union flag hoisted at the Yarmouth or Queenborough's main top-mast head, the signal for a closer engagement?

A. I did not.

Q. At the time you hailed the Cumberland to make sail ahead, and she was at about two cables length distance from the Yarmouth, did you see any thing that prevented her from coming to a closer engagement?

A. No, I did not.

Prisoner asks.

Q. When you hailed the Cumberland to make sail ahead, and she was at about two cables length distance, did you observe she was backing off, and immediately braced about her head sails, set her foresail, and run up with the Admiral?

A. I really did not take notice of it.

Q. When you hailed the Cumberland, was you on her lee or weather quarter?

A. Near right astern, rather upon her weather quarter.

Q. *from the Court.*—You have said that you did not observe the Cumberland (after your hailing her) fill her head sails, and set the foresail; Did you lay to, in the Weymouth, for some small space of time afterwards; and if you did, did you observe any increase of distance between the Cumberland and Weymouth?

A. We lay all aback, to prevent being on board the Cumberland, and by that means fell a greater distance from her.

Prisoner asks.

Q. If the Cumberland had not made sail, how could the Newcastle have found means to get into her station again?

A. We lay all aback, but I did not observe that the Cumberland had made sail.

Mr. John Meridith, Boatswain of the Weymouth, sworn.

Q. Where was you quartered, on board the Weymouth, on the 29th of April last, the day of action?

A. Upon the forecastle.

Q. Relate to the Court what you know particularly relating to the Cumberland, from the time the Admiral bore down to engage the enemy, and to the time the engagement ended.

A. I remember we all bore down together, the three sternmost ships at the time the Admiral bore down; and the Cumberland brought up to engage in a line with the Admiral, about half a quarter of an hour after the Admiral brought up. I judged the Cumberland to be about a cable and a half distance from the Admiral at this time; and, as near as I can judge, the Cumberland

berland was then square with the sternmost ship of the French rear, engaging with her main topsail to the mast. I cannot say I took any notice when the Cumberland left off engaging. When the Weymouth hailed the Cumberland, I heard her answer, which was, We are in our station, you must lay all aback.

Mr. James Watts, Master's Mate of the Weymouth, sworn.

Q. Where was you quartered, on board the Weymouth, the 29th of April last, the day of action?

A. To observe signals, upon the forecastle.

Q. Relate to the Court what signals you observed to be made on board the Yarmouth during the action, and what time they were made.

A. I saw the signal for battle about a quarter past three; the signal for a closer engagement was made about a quarter after the signal for battle. Some time after the Squadron began to engage, I saw a white pendant at the main topmast head, and a blue pendant, I saw another pendant, but I do not remember where it was hoisted: as to the time, I cannot answer.

Q. What do you know relating particularly to the Cumberland, from the time the Admiral bore down to engage the enemy, to the time the action was over?

A. I observed the Cumberland bear down at the same time the Admiral did, and bring up soon after him; I believe in a line with the Admiral, about a cable length astern of him: a very little time after she brought up, she began to engage; I can't say which of the French ships she was engaged with, or how long she was engaged. After we had passed the Newcastle, I was ordered by the Master to hail the Cumberland, and desire that they would make sail, and close the center; they answered, We must throw all aback, or else we should be on board them. She was laying under her three topsails; the main topsail was to the mast; I think the mizen topsail was full; she had no other sail set as I could discern. I believe she was in a line with the Admiral, and about a cable and a half distance from her. This was about half an hour after the Cumberland brought to first; about twenty minutes before that, the Admiral left off firing: when we came up to the Cumberland, she was engaging. I took no notice of the Cumberland after that, nor at this time do I know what ship she was engaging with.

Q. Relate to the Court what position you observed the rear of the French line to be in, from their Admiral, from the time you first observed the Cumberland to bring up and engage the enemy, to the last time you observed her, which was the first time you hailed her.

A. I can't say what situation the French rear might be in to their Admiral, I only took notice of the two sternmost ships, they were about a cable length from the Cumberland, and the headmost was something before the Cumberland's beam, and the sternmost half a cable length astern of her.

Q. Did you, within any short time after hailing the Cumberland, observe her to fill any sails, to shoot up near the Admiral?

A. No, Sir, I did not take any notice of her.

Q. Did you, at the time you shoot up with the Cumberland, range up on her

her weather quarter, and fire any part of your bow-shot in upon her quarter ; and was your bow ever shoot in upon the Cumberland's weather quarter ?

A. I don't remember the Weymouth being on the Cumberland's weather quarter at all.

Prisoner asked.

Q. Did you see the person that answered you from the Cumberland ; if you did, what part of the ship did he stand on ?

A. I don't know who it was ; I was answered from the poop, from the lar-board quarter.

N. B. Then the prisoner gave in a paper, which he said contained a narrative of his defence, which he begged leave to read himself ; which the Court granted, and the prisoner read as follows, and delivered it into Court.

" GENTLEMEN,

" It is a matter of great concern to me, that I should ever have occasion to appear before you, as in the present case ; but it affords me a very singular satisfaction, that I have now an opportunity of clearing up my conduct. True it is, that there have been some people who have industriously endeavoured to asperse my character ; but I hope my evidence will sufficiently evince the falsity and cruelty of those aspersions.

" I am well convinced, that if all the motions of the Cumberland, during the action, had been strictly observed from the Yarmouth, the Admiral would not have given you, Gentlemen, the trouble of enquiring now into my conduct or behaviour.

" I shall not take up your time in a needless digression ; but hope you will please to make allowances for my inadvertence, if any should appear to you, Gentlemen, who have had more experience.

" Before I endeavour to defend myself from the charge against me, I think it necessary to lay before the Court a faithful narrative of the action, as far as is necessary to my defence ; which I shall do in as concise a manner as I can, beginning according to the log, with my remarks on Saturday, April 30th, 1758.

" Moderate and fair weather, the wind at nearly south, still in chase of the enemy ; at half past noon the Admiral hoisted his colours, and made the signal for the line of battle ahead ; at the same time the French ships hoisted their colours, they being formed in a line of battle ahead. At three quarters past one, P. M. the Admiral made the signal for the van ship to bear a point to leeward of the course then steering : about two o'clock, the Queenborough passed by us to leeward, to tell me the Admiral had ordered them to put their marines on board the Cumberland, and desired I would send a boat for them ; I immediately sent the pinnace for them. At half past two the Admiral made the signal for the van ship to lead two points to leeward of the course then steering : we now observing the Queenborough being much astern, and that we were got pretty well into our station in the line, I ordered the mainsail to be hauled up, and the studding sails to be hauled down. At forty minutes after two, the Admiral threw out the Tyger and Salisbury's pendants : at
fifty

fifty minutes past two, being in our station in the line, and observing the Admiral's main topsail square, I ordered ours to be squared also: as my eye was chiefly on the Admiral, I observed, something before three, that he was wearing to bear down on the French Admiral; I immediately ordered our helm to be put aweather (at that time having our foresail, topails, topgallant sails, jibb and stayails, set) I ordered our after-sails should be kept shivering, hauled down the mizen stayail, and hauled up the mizen, and bore down after the Admiral, for the ship opposed to us, the French Admiral's second aftern: when the ship fell off, so as to get the wind a little abaft the beam, she layed by her helm, and would not fall off before the wind. Something after three, the Admiral brought to, and made the signal to engage; we continued running down near a quarter of an hour longer, though we sustained the fire of the three ships aftern of the French Admiral, which I took notice was chiefly aimed at us: at half past three, I observed the Weymouth's and Newcastle's signals flying on board the Yarmouth; at this time, being nearly in the Admiral's wake, and fearing I could not get nearer the enemy without running under the Admiral's lee, and taking off his fire from the French Admiral, I ordered that the ship should be brought to (and sent directions to the Officers to begin firing as soon as their guns would bear) and hauled the foresail up, took in the topgallant sails, and hauled down all the stayails, but the jibb and main topmast stayail, as I knew they would be useful in preserving our station.

" I must here beg leave to observe, that as I knew firing as we bore down would only cause confusion, and the smook obscure our sight; that firing at random would only waste our ammunition, and fatigue our people unnecessarily; I particularly recommended it to the Officers, before they went to their quarters, not to suffer their guns to be fired without a moral certainty of their doing execution; and when we bore down, I sent my repeated orders to the Officers not to suffer a gun to be fired until they had my directions so to do; these orders were punctually obeyed, as we did not fire a gun till we brought to, close to the Admiral's stern, so close indeed, that I was obliged to back both main and mizen topails: after engaging our opponent about a quarter of an hour, she shoot ahead, and got under our Admiral's lee quarter; as I was near the Yarmouth, I braced the head sails aback, to avoid being on board her, and to pay our ship's head off, to bear down nearer the enemy; and while we were aback, we were engaged with the second ship from the French Admiral. We had not lain in this posture above six minutes, before I was told the Newcastle hailed us to make sail up to the Admiral; I looked aft, and found she was close up to our stern, rather to leeward of our wake: as our head by this time looked something to leeward of the Yarmouth, I directly braced about the head sails, and let run the fore clewgarnets (the buntlines and leechlines were shot away before) and run up the fore topmast stayail: although the Yarmouth had shoot something ahead of our opponent, we soon run up to her, without falling off above two points, though we neared our opponent considerably, and renewed our attack with her for about twenty minutes, when she again run up under the Yarmouth's lee. I then imagined the French Admiral had drawn ahead, or on the lee bow of the Yarmouth; I again braced

our head sails aback, to pay our ship's head off, that I might get nearer the enemy; and during this time we were engaged with the second ship from the French Admiral, as before. We had not been aback above four or five minutes, before I was told that there was a ship on our weather quarter would run foul of us; I stepped into the stern gallery, and hailed her to lay all aback, but could get no answer from her; I went out upon deck, and finding our head paying off, I ordered that the head sails should be braced about, and let run the fore clewgarnets as before: as soon as we gathered way, we soon run up with the Yarmouth, and again renewed our attack on the French Admiral's second, though I observed our fire was divided now between her and the ship astern of her: about six or seven minutes after the French Admiral bore away; on which our adversary made sail ahead, and the next ship to her came abreast of us, we gave her our whole fire, which put her in some confusion, dropping her foresail, and hauling home her topgallant sheets, and edging out of the line. The rear ship now closed up with us, and we gave her our fire, and after she had returned it, she bore up under the lee of the next; and I observed they all fired their broadsides at the Yarmouth as they passed by her. At this time I was told from the forecastle, that they hailed us from the Yarmouth to make sail and pass by them; at this time I observed the signal for coming to a closer engagement, and the Weymouth, Newcastle, and Cumberland's pendants flying on board the Yarmouth: I immediately made sail, and finding the ship would not bear up, I braced up, and passed the Admiral to windward; while I was making sail, a boat dropped alongside from the Admiral to tell me to go ahead, and engage any ship I could come up with. After passing the Admiral, we observed the signal out for a general chase; I immediately obeyed it, and fired several shot to rake one of the enemy's ships as she was running before the wind, but fearing they did no execution, I ordered them to cease firing. At half past five o'clock, the Admiral hauled down the signal for engaging; and observing our ships laying to, we brought to also: the enemy now had wore, and stood to the westward in an irregular line.

"What I have laid before the Court, to the best of my knowledge or observation, is a faithful account; and I hope the information this Court has received from the evidences, will prove every part of it to be true.

"I must here intreat the Court will consider the condition of the Cumberland the day of the action: In the first place, it is most notorious to the whole squadron, that she sails very bad; add to this, her not having been cleaned for seven and twenty months, and then, I believe, it will be allowed, that I could not always keep the situation prescribed to me by the order of battle, which is half a cable length from the Admiral; for when the French Admiral drew ahead of the Yarmouth, she was obliged to make sail to follow her; and as the Admiral was continually engaged, and consequently surrounded with smoak, she might make sail, and shoot a cable length before we perceived she had sail set, especially as we were continually engaged in the Cumberland; and when it is also considered, that the Cumberland had no idle people to attend the braces, and that getting men from the guns is also very difficult, it cannot be wondered at that we were not at all times in the same position with the Yarmouth.

"I think

" I think, the greatest distance that the Cumberland has appeared to be from the Yarmouth, is, when the French ships bore away; and then I shall be able to prove, we heard Mr. Chambers call to us, to make sail ahead and go by the Admiral. I think it must be confessed, that we could not be far off, to hear a person call, and to know that person too, and to hear distinctly what he said, especially when there was such a noise on board, and the ships ahead firing at the same time. A farther proof of our hearing those orders is, my obeying them directly; as the Officer who was sent from the Admiral found us making sail.

" I hope now to prove to this Court, during the examination of my witnesses, that I did continue in battle, and that I was constantly engaged with one of the French ships, from the time I first brought up until the French broke the line and bore away. Surely I cannot be culpable for not having continually engaged the ship opposed to me: if she found means to draw up under the Yarmouth's lee, I followed her till I could not bring a gun to bear on her; and then I braced aback to get nearer down to the French line, to watch the opportunity of attacking her again, in which I succeeded two different times, though not quite so effectually as I could have wished; but I hope it will be considered, that, during the space of time I was not engaged with the ship opposed to me, I was then engaged with the ship astern of her, as it was impossible for me to avoid it, for the French rear kept a close line, so close indeed, that at the latter part our fire was divided between the French Admiral's second and the ship astern of her.

" I shall offer nothing more in my vindication, but leave to the candid reflection of the Court, to determine for me, whether I did not continue in battle, and that I did not withdraw, or keep back, unless backing and filling to preserve my station in the line, and to get nearer the enemy, can be esteemed so. And I hope it will appear to the Court, that I used every effort in my power to assist his Majesty's ships, and to destroy his enemy's.

W. BRERETON."

Then the Court proceeded to examine the witnesses for the prisoner.

Mr. John Bruce, Master of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last?

A. Upon the quarter-deck.

Prisoner asks.

Q. Did not we put our helm aweather to bear down to the enemy, the moment we saw the Admiral's sails shivered to bear up?

A. Yes, Sir.

Q. Court.—You have heard the charge against Captain Brereton, please to relate to the Court what methods were took (from the time of the Admiral's bearing down to engage the enemy) to bring the Cumberland into action, and to keep her as closely engaged as the Admiral, in obedience to the signals?

A. Before the Admiral bore away, the Cumberland was laying to, with the main-top sail to the mast, her top-gallant sails set, jibb, foresail, and all the stay sails. As soon as we perceived the Admiral bear away, the mizen was hauled up, the mizen and mizen topmast stay sails hauled down, the helm put aweather, and the main and mizen top sails shivering; we continued running down with our helm aweather till we came near the Admiral; during this time, the ship did not fall off as much as Captain Brereton intended, for he ordered me to carry the ship astern of the Admiral, but she ran against her helm. We could never bring the wind above a point or two abaft the beam, and several times she came up to the wind against the helm: till we came very near the Admiral, we were obliged to shorten sail, or else, I believe, we should have been on board him.

We laid the main top sail to the mast, took in the topgallant sails, and hauled down all the stay sails; but the jibb, main and fore topmast stay sails, and the mizen top sail, lay aback, and the foresail was hauled up to prevent being on board the Admiral; and to pay her head off, in order to get near the enemy, which was Captain Brereton's orders to me, we were obliged to lay all aback. One of the ships astern hailed us (I believe it was the Newcastle) to make sail ahead: we then set the foresail, filled the fore top sail, and put the helm aweather, and we ran up close to the Admiral a second time, and was obliged to lay all aback again; after we got astern of the Admiral, at a proper distance, the fore top sail was filled again, and continued in that situation till we were hailed again by the Yarmouth, and ordered to make sail ahead, which we immediately did: we passed the Admiral to windward very near; and then I think the Admiral made the signal for a general chase.

Q. Relate to the Court at what time the Cumberland began to engage the enemy, and how long she continued in action, with her situation from the Yarmouth, and the ship she was engaged with.

A. I cannot say positively as to the time; we began to engage about fifteen or twenty minutes after three; I believe, about ten or fifteen minutes after the Admiral began to engage, we was in a direct line with the Yarmouth; we brought up about half a cable length from the Admiral. I think the greatest distance we was from the Yarmouth during the action, was a cable length. I believe we were engaged about an hour; at first we engaged the French Admiral's second about two points before the beam, two cables, or two and a half, was the greatest distance, and two cables the nearest distance; and the ship astern of him afterwards as she passed us. We made no alteration with the Yarmouth, till towards the latter end of the action. At the time the French bore away, we was then about a cable length from the Yarmouth, one or two points upon her weather quarter.

Q. You was saying the Cumberland was engaged near an hour; Do you mean constantly, or was there any cessation in the time?

A. I mean constantly.

Q. How long did you continue in a line with the Admiral?

A. Until the French bore away.

Q. When the Cumberland came against her helm, which prevented her from getting into her station, had you any other head sails set than those you mentioned before?

A. No.

A. No.

Q. Was your spritsail and spritsail topfail bent?

A. The spritsail was bent, but I do not know whether the spritsail topfail was or not.

Q. The time that you was paying off, to prevent being on board the Yarmouth, in what position were your sails?

A. Our fore topfail was braced sharp aback, and main and mizen topfails square, and the helm hard aport.

Q. Did the ship pay round in that position?

A. Yes, about two or three points.

Q. Did you then brace about your head sails?

A. Yes, filled the fore topfail and set the forefail.

Q. Did she obey her helm when she gathered way?

A. She never fell off right before the wind, so as to get clear of the Admiral's stern, or so near the enemy as Captain Brereton would have had her.

Q. Did you observe the main and mizen topfails shivering, at the time after the Newcastle hailed the Cumberland, and you made sail up to the Admiral?

A. The mizen topfail always was shivering, but the main was not all the time. The starboard brace pendant was shot away, and the yard was nearly square all the time.

Q. When the Cumberland fell off two or three points, was the main topfail full or aback?

A. I believe it might be full.

Q. Are you sure the helm was aweather all the time you were shooting up to the Admiral?

A. Yes, I am.

Q. How near did you come to the Admiral the second time, before you shortened sail?

A. So near that we were in danger of being on board her; we were in his wake, or a little to leeward of him.

Q. Your answer to the last question was, you were in the Admiral's wake, or a little to leeward of him; and in the latter part of the action, you say you was to windward on the Yarmouth's starboard quarter?

A. I can't account for it any other way than the Admiral shooting ahead of us.

Q. Did you observe the Cumberland was, at any other time since you have been in her, so difficult to wear as she was at that time in smooth water?

A. She was always difficult to wear, but not so much as on the day of action.

Q. What do you imagine might be the occasion of her being difficult to wear at that time more than any other?

A. I believe by the number of boats astern, I do not know any other.

Q. What number of boats had the Cumberland astern then?

A. I believe there was then the long boat, pinnace, and yawl.

Prisoner asks.

Q. You have acquainted the Court, that Captain Brereton made one effort to get down to the enemy; Had not the Cumberland her head sails braced aback

aback for that purpose, when the ship ranged up on our weather quarter and fired a shot into the Cumberland?

A. Yes.

Q. Did not Captain Brereton go into his stern gallery (judging his ship was not payed off enough) and hail that ship to lay all aback, and on getting no answer, did he not come out and order the head sails to be filled, and foresail set?

A. Yes.

Q. Did not the Cumberland run up to our Admiral a second time, in the same manner as she did before, without wearing clear of him?

A. Yes.

Q. How far did you see the ship's jibb-boom (that run up to the Cumberland) forward on the Cumberland's starboard side?

A. I believe as far as the main mast.

Q. Although the Cumberland could not wear clear of the Admiral, do not you think we near'd our opponent considerably every time we bore down?

A. I believe we near'd our opponent every time we bore down, but not continually.

Q. Do you think it was ever practicable to get the Cumberland to leeward, of our Admiral, without running under his lee, and taking off his fire from the enemy?

A. No, I don't think it was, for the reason I have given the Court before.

Q. Did Mr. Chambers give you a character of the Cumberland? if he did, please to relate it to the Court.

A. He told me she wore very bad; if any thing was near her to leeward, it was dangerous to attempt wearing her: he said, she would stay pretty well; at the same time he told me she was in a very bad condition, and he believed she was in general worse than people thought her.

Q. Do you remember of seeing the Cumberland's signal flying on board the Yarmouth after she began to engage?

A. No, I remember to see it after the French bore away.

Q. Was there not seaman-like methods used to get the Cumberland close, and continually engaged; And do you think there was any thing left undone that should have been done, by Captain Brereton, to effect it?

A. I believe there was every thing done that was necessary; nor do I think there was any thing left undone by Captain Brereton to effect it.

Q. Court.—Did you see the general signal for closer engagement, at any time of the action, flying on board the Yarmouth? if you did, relate to the Court what time.

A. No, I did not see it.

Q. Did you see the signal for battle?

A. Yes, immediately after the Yarmouth began to engage, and I believe it was up all the whole engagement.

Six o'clock. The Court adjourned to Saturday morning.

June the 24th, 1758.

On Saturday morning at eight o'clock the Court met according to adjournment.

Lieutenant James Bulteel, of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, on the 29th of April last?

A. On the upper deck.

Q. Relate to the Court what you know of the Cumberland, from the time of the Yarmouth bearing down to engage the French Squadron, to the time the action ended.

A. I did not take any minutes, nor can I give a proper narrative. We bore down in the Cumberland as soon as the Admiral did, with three top-sails, fore-sail, topgallant sails, jibb and stay-sails set, and did not shorten sail till we brought up to engage; which was, I believe, twenty minutes after the Admiral began to engage: we brought up in the Admiral's wake, about a cable length distance. We were, I believe, within point-blank shot of the French Admiral's second stern, which was the ship we engaged; I judge about two or three cables length distance, but not more: we continued to fire constantly at that ship, and the ship stern of her, I believe above an hour; for after the French Admiral's second stern received three or four broadsides from us, she run under the French Admiral's lee quarter, and the next ship came up. Soon after the French Admiral's second dropt stern again; after we had engaged her some time, she draw'd ahead again, and run under their Admiral's lee quarter: then we pointed our guns at, and engaged the ship next stern of the French Admiral's second again; we continued engaging with her as long as we could bring the guns to bear on her, and afterwards with the other ships as they passed us. The time we continued to engage was about an hour and a quarter from first to last.

Q. You say that the Cumberland brought up in the Admiral's wake, about a cable length distance; inform the Court if you altered your position with the Yarmouth during the hour and quarter you was engaged?

A. I remember we near'd the Admiral pretty fast, and the Captain thought we should be on board of him; he ordered the fore top-sail to be back'd, to back her off, and in a few minutes we fill'd him again, and kept in our station, as near as possible, during the remaining part of the action.

Q. During any part of the action that the Cumberland was engaged, do you remember that she was to the windward of the Admiral?

A. Towards the latter part of the action, we was a little upon the Admiral's weather quarter, within a cable length distance; we were within hail of the Admiral; it was the time he hail'd us to make sail ahead.

Q. Can you give any account how the Cumberland got on the Admiral's weather quarter, after being in a line with him?

A. I believe the Admiral edg'd further down.

Q. At the time of the Cumberland first bringing up to engage, in what position did you observe the rear of the French line from their Admiral?

A. When

A. When first the Cumberland brought up to engage, the rear of the French line seemed to be pretty much in a line with their Admiral. There was four ships astern of the French Admiral (one was the frigate) about a cable length distance from one another.

Q. What did you observe further of the French rear, to the time you left off firing in the Cumberland?

A. I observed the frigate soon go out of the line: after we had engaged about an hour, they all bore away, under one another's lee; and, for some time, the three ships continued in the same situation, and then seemed to draw ahead. When the frigate broke the line, the sternmost of the French ships got in her place.

Q. During the time the Cumberland was engaged, did you observe the signal to come to a closer engagement flying on board the Yarmouth or Queenborough?

A. I remember seeing the signal for coming to a closer engagement flying on board the Yarmouth, about the middle of the action; I took no notice how long it was flying.

Q. Did the Cumberland, at any time after you saw the signal, make any attempts to get nearer the enemy in consequence of it?

A. Yes; we set the foresail, I remember, and shivered the after-sails, and kept edging down; we neared the Admiral, and had not room to wear under his stern; we brought up in a line with the Admiral very near.

Q. Can you recollect, at any other time, that you made any attempt to get nearer the enemy?

A. I remember after we were in our station, and the foresail was hauled up, we set it again the second time.

Q. At the time the foresail was set, and the after-sails shivered, what other sail was set forward?

A. The jibb and fore topmast stay-sail; the main topmast stay-sail was set the whole time of action.

Q. The second time the foresail was set, what other sail had you out forward, and what methods were used to make her wear?

A. We set the foresail a second time, because the Admiral drew a little ahead of us.

Q. What was the greatest distance at any time between the Yarmouth and Cumberland?

A. I never perceived the Cumberland much above a cable length from the Yarmouth, and often within a ship's length.

Q. You say that when the Cumberland engaged the French Admiral's second astern, she shoot ahead of you; Did you observe what distance the Yarmouth was from you?

A. I can't say that I observed, but she was never at any time a great distance from her; I believe the foresail was set at that time, which hindered me from seeing the Yarmouth.

Q. You have said, that about the middle of the action you observed the signal to be flying on board the Yarmouth for coming to a closer engagement; was the Cumberland at any time after that as closely engaged as the Admiral?

A. Not quite so close, but within a ship's breadth or two as close : we endeavoured to be full as close as the Admiral.

Q. Relate to the Court, what endeavours were used to bring the Cumberland as close engaged as the Admiral.

A. The foresail (I said before) was set, the jibb and fore topmast stay-sail was hoisted, the after-sails shivered, and the helm was aweather, I suppose.

Q. What was your nearest distance to the enemy whilst the Cumberland was engaged with them?

A. I believe at one time we were within a cable and a half of the enemy, but I don't know whether it was the French Admiral's second, or the ship astern of him; it was just before the action ceased.

Q. Do you mean the action ceasing with the Admiral or the Cumberland?

A. I mean the cessation of the whole action; it was just before the French Admiral bore away.

Q. You have mentioned the attempt the Cumberland made to get nearer the enemy; Did you observe her fall off, and how much, before you were obliged to shorten sail?

A. She fell off, I believe, till she brought the wind about two points abaft the beam, then she would wear no farther, but run up close under the Admiral's stern; and we was obliged to shorten sail, we could not wear clear of him.

Q. When you observed the Cumberland fall off, how far do you judge her to be from the Admiral?

A. Within half a cable length.

Prisoner asks.

Q. Was there a gun fired at your quarters before the Cumberland brought to, and you had Captain Brereton's direction so to do?

A. Not one.

Q. You have told the Court, that we endeavoured to get the Cumberland as near engaged to the enemy as the Admiral was: Don't you recollect that the Cumberland's foresail was set twice during the action; and at each time it was set, don't you remember that the head sails were braced sharp aback, to pay the ship's head off, to bear down to the enemy; and that each time we ran up to the Admiral without effecting it?

A. Yes; the head sails had been braced aback at each time before the foresail was set, but were not at the time the foresail was set; and we did near the Admiral so as not to wear clear of him.

Q. Did not the Cumberland, each time we bore down on the enemy, near them considerably?

A. Yes, we neared the enemy; we was nearer to them the latter time than the first.

Q. Do you think there was any shot fired from your quarters without a probability of doing execution?

A. No; I don't know of one, from the first to the last.

Q. Was not the Cumberland constantly engaged with the ship opposed to her, or the second ship from the French Admiral, from the time she first came

came into action, till the French Admiral bore away, and the rearmost ships of the enemy had passed the Cumberland?

A. Yes, the Cumberland was engaged constantly till the French Admiral bore away, and till we had no ships to fire at.

Q. Don't you think there was proper methods used to get the Cumberland close down to the enemy, and to keep her constantly in close action?

A. Yes, no Commander could take any other method than what was used.

Q. Was you ever in a ship that worked so bad as the Cumberland?

A. Never in my life.

Q. In the evening of the day of battle, after Captain Brereton went on board the Admiral to answer his signal, did not you attempt to wear the Cumberland, in obedience to the signal the Admiral had made, and after attempting it, was you not obliged to haul aft the sheets and tack her?

A. Yes.

Q. *from the Court.*—When you neared the enemy by bearing down, did you observe the Yarmouth bear down?

A. I believe if the Yarmouth had not bore down, we should have had no occasion, for I thought we were very well in our station before.

Lieutenant Thomas Daniel, of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. Upon the gun deck, to command from the main mast aft.

Q. Relate to the Court what you know particularly with regard to the Cumberland, from the time of the Yarmouth bearing down to engage the French squadron, to the time of the action being over.

A. I received my orders from one of the Aid de Camps, from Captain Brereton, not to suffer a gun to be fired at my quarters, until I had his direction; my answer was, Give my compliments to Captain Brereton, and tell him, his orders shall be obeyed. I observed, as the Cumberland was going down, there were four ships in the enemy's rear, astern of the French Admiral, and fired pretty brisk as we were going down; I immediately upon bringing up received orders from Captain Brereton, to bring the guns to bear, and to fire as soon as possible upon the enemy. After we had engaged some time, the Cumberland's head appeared to me so much paid off, that I could not bring the after-guns to bear for the space of five or seven minutes. I imagined at that time that we were running down nearer to the enemy, and afterwards 'twas clearer, in my opinion; for after bringing to, we had neared the ship opposed to us considerably, and we brought our guns abaft to bear on the French Admiral's second astern, and continued to fire upon her, and the ship next astern of her, till the French ships had passed us, and we could bring no guns to bear.

Q. Do you know at what time the Cumberland brought up to engage?

A. I don't know exactly the time; I had no watch; I imagine it was about fifteen or eighteen minutes after the Admiral began to engage. I did not see the French Admiral.

Q. What

Q. What distance did you judge the French Admiral's second to be from you, when first you began to engage him?

A. It is difficult to ascertain distances on the sea; I can't speak positively; to the best of my judgment, I think three cables length was the most that the Cumberland was from the enemy, at the time she began to engage.

Q. At the time of the action you judged the Cumberland to be nearest the enemy, what distance might she be from them?

A. Two cables length, or something less.

Q. During the time of the action, what did you observe of the rear of the French squadron, with regard to their situation, and distance from their own Admiral?

A. I observed the headmost ships were the weathermost: I observed, after we had fired a broadside, that the frigate, the sternmost ship but one in the line, had edged away out of the line, which made a greater distance between the sternmost ship, and the ship that was ahead of the frigate; that the sternmost ship then closed up with the ships ahead of her. I made no farther observations, till they all shoot ahead of the Cumberland, being employed at my quarters.

Q. During the time the Cumberland was firing, was your guns always fired upon a level?

A. Before we came into the action, I laid up every gun myself, as near point blank as I could judge: the first gun I began to point, I was very particular in the elevation; I pointed it at the enemy, and found that they bore upon the enemy's lower deck ports; and several times, after I had pointed the guns, and ordered them to be fired, I ran sometimes forward to the ports, and sometimes aft, to see if the shot fell short of the enemy, and during the whole action I never saw one fall short.

Q. Do you know how long you was engaged, in the Cumberland, with the enemy?

A. I have said before, I could not speak positively as to time; I believe we were engaged an hour, or something more, including the five or seven minutes the after guns would not bear.

Prisoner asks.

Q. You have told the Court, there was a space of five or seven minutes you could not bring the guns to bear; Were we not, after that, constantly engaged with the ship opposed to us, or the ship astern of her, till the French Admiral bore away, and their stern ships had broke the line, and passed by us; and did not you fire on them as long as your guns would bear?

A. I observed before, that the Cumberland (excepting that five or seven minutes) was constantly engaged, as long as the guns at my quarters would bear, till the French ships shoot ahead.

Q. Did you hear Mr. Chambers give Mr. Bruce a character of the Cumberland? If you did, please to relate it to the Court.

A. I did; he observed, that if ever we had occasion to put the ship about, or if the signal should be made to wear, he would advise us always to tack her, for she would not wear, for that her wearing was very uncertain; and I think that he observed it was sometimes impossible to wear her; but if we were resolved to attempt it, he would advise us to keep a good look out to leeward;

for if there were any ships to leeward of us, we should either make them sheer off, or very likely run on board them. I myself observed, that it was a little unlucky, to be turned on board such an unhandy ship, after coming out of the Yarmouth, that worked like a smack, and that I believed we should have a great deal of trouble and plague with the Cumberland. Mr. Chambers replied, That was the least of the trouble we should have with her, for, if he was not much mistaken, she would make all our hearts ach before we had done with her. It was in generality thought she was in a very bad condition, but he believed her to be much worse than was imagined; and that if we came into a gale of wind with her, he much doubted whether she would outlive it or not.

Lieutenant Thomas Rich, of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. On the lower deck, before the main-mast.

Q. Relate to the Court what you know particularly with regard to the Cumberland, from the time the Admiral bore down to engage the enemy, to the time the action was over.

A. I went upon the lower deck to my quarters as soon as we discovered the ships to be an enemy, and never came from thence during the action; therefore I know not what was done upon deck. We brought to about eighteen minutes after the Admiral began to engage, astern of the Admiral, but I did not see him myself; we engaged the French Admiral's second astern about half an hour, and about three cables length distance; we then left off firing for about six or eight minutes, as our guns would not bear; we then drew nearer, and began to fire again, with the same ship that we fired at before, and continued about ten or twelve minutes, then left off firing for about four or five minutes, and then we engaged the second and third ships astern of the French Admiral about a quarter of an hour, about four or five cables length distance, and then they bore away under their own Admiral's lee; I judged the French Admiral bore away about three or four minutes after the ships we were engaged with did.

Q. You say that the Cumberland began to engage about eighteen minutes after the Admiral began to engage; Did you observe how the French rear was situated with respect to their Admiral?

A. Yes, Sir; I observed that the sternmost ship of the French rear was farthest to leeward, and so on to the Admiral, to leeward of one another.

Q. You have said you engaged the French Admiral's second about half an hour, and then left off firing, as your guns would not bear; What do you apprehend was the reason they would not bear?

A. As I observed the enemy to be nearer us on our attack, I imagined it was occasioned by the Cumberland edging away to come to a closer engagement with the enemy.

Lieutenant

Lieutenant Lewis, of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, on the 29th of April last, the day of action?

A. The first part of the time upon the quarter deck, and the latter part on the lower deck.

Q. Inform the Court what you know particularly with regard to the Cumberland, from the time the Admiral bearing down on the French squadron, to the time of the action being over.

A. The first part of the action I was chiefly employed in distributing the men to different parts of the ship, by Captain Brereton's order. I can't pretend to give a narrative, because I was up and down every five or ten minutes; the first observation I made, was at the time the Admiral bore away; we immediately hauled our mizen up, hauled down our mizen stay-sail, shivered the after-sails, put the helm aweather, and followed the Admiral; we brought up some time after the Admiral, and began to engage the French Admiral's second aftern, to the best of my judgment two cables length distance. We was, when we first brought up, something better than a third of a cable from the Yarmouth, right in his wake; some small time after we were obliged to haul our foresail up, and take in the topgallant sails, hauled down all our stay-sails, except the main topmast stay-sail and jibb, and very soon after laid the fore top-sail to the mast, to avoid being on board the Yarmouth; some minutes after set in our weather braces to pay the ship off; we continued in that situation eight or ten minutes, when we were hailed by one of the ships aftern, and Captain Brereton was told she would be on board of him if he did not make sail. He immediately ordered the head sails to be braced about, set the fore-sail, and edged down to the enemy; we were presently close up to the Admiral again: finding the ship went against her helm, we were obliged to lay all aback, to prevent falling under the Admiral's lee, and taking off his fire from the enemy; we then backed our head sails, and dropt aftern, in order to make another effort to get closer to the enemy, but was soon prevented by being hailed a second time by a ship which was on our weather quarter. Captain Brereton went into the stern gallery to hail her, but could get no answer. Captain Brereton went then on the quarter deck, and ordered the head sails to be braced about, and the fore-sail to be set, as before, and edging down on the enemy till we came close to the Yarmouth's stern.

Q. When you laid all aback to avoid being on board the Yarmouth, and continued laying so till you were hailed, how much did you increase your distance from the Yarmouth?

A. To the best of my judgment two thirds of a cable length; I cannot justly say whether we were to windward or to leeward of the Admiral.

Q. The second time backing the Cumberland, to avoid being on board the Yarmouth, how much did you increase your distance from the Yarmouth before you was hailed again?

A. To the best of my knowledge, half a cable.

Q. When you was on the lower gun deck, did you make any remarks of the rear of the French squadron?

A. Not

A. Not particularly ; I always observed an object to fire at till the French bore away.

Q. Did you observe the signal for a closer engagement flying on board the Yarmouth, or Queenborough, before you went down on the lower deck ?

A. I never observed it during the action, nor did I hear it reported.

Q. What was the greatest distance, when you was upon deck, from the Yarmouth, at any time during the action ?

A. A cable length, to the best of my judgment.

Q. How long do you think the Cumberland continued in action ?

A. Something more than three quarters of an hour, from the first time of our being engaged to the time of the signal being made to go ahead.

Prisoner asks.

Q. What ship of the enemy's was the Cumberland engaged with, before you went down on the lower deck ?

A. Chiefly the French Admiral's second astern, except those times we were making efforts to get down nearer the enemy, then we directed our fire to the ship astern of him.

Q. Don't you think the Cumberland neared her opponent each time she edged down ; and what do you think was the nearest distance the Cumberland was engaged at ?

A. The Cumberland neared her opponent every time she edged down, and the nearest distance she engaged was, to the best of my knowledge, two cables length.

Q. Do you think it was ever practicable to get the Cumberland to leeward of our Admiral, without getting under his lee, and taking off his fire from the enemy ?

A. No, I really think it was not ; for I believe all proper methods were used, tending to the wearing the ship, but we never brought the wind above a point, or a point and a half, abaft the beam, in both these efforts that were made to get nearer the enemy.

Q. Was not the Cumberland constantly engaged, from the time she brought up under the Admiral's stern, to the time the French bore away, and their rear passed by us ?

A. Yes, with one or another of the French squadron all that time.

Q. Was any thing left undone by Captain Brereton, that might have been done, to keep the ship closely and continually engaged ?

A. No ; in my opinion he used all proper methods for a person in his character.

Q. *from the Court.* — You have said that the Cumberland engaged the enemy at about two cables length distance ; How long did she continue to engage at that distance ?

A. To the best of my knowledge, about a quarter of an hour.

Q. At what time of the action was the Cumberland engaged nearest ?

A. The latter part.

Q. Did you see the Yarmouth at that time ; if you did, at what distance was the Cumberland from her ?

A. No, I did not see the Yarmouth at that time.

Mr.

Mr. John Moulden, Gunner of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. The fore part of the lower deck.

An ACCOUNT of the expence of powder and shot, on the day of action, as delivered into Court by the prisoner, and acknowledged by the evidence to be the account he delivered to the prisoner after the action; and which was as follows, viz.

Powder.	Twenty-nine barrels and thirteen pounds.			
Round shot.	{ 32 pounders	—	—	133
	{ 18 ditto	—	—	236
	{ 9 ditto	—	—	66
Double-headed shot.	{ 32 ditto	—	—	29
	{ 18 ditto	—	—	6
Grape shot.	18 ditto	—	—	5
Ordnance rendered useless.				

One 32 pounder split in the muzzle, by one of the enemy's shot.

Q. *from the Court.*—Do you know at what time the Cumberland brought up first to engage, and how near the enemy?

A. I can't say as to time; I believe it might be about a third of a mile distance from the enemy.

Q. Did you observe the Yarmouth at that time; if you did, how was she situated, and at what distance?

A. I did not observe the Yarmouth at that time.

Q. Can you tell what ships of the enemy the Cumberland was engaged with; and at what distance; and at what time?

A. We were engaged with all the ships of the French rear at times, but mostly with the French Admiral's second aftern.

Q. Do you know how long the Cumberland was engaged?

A. I cannot be certain of the time; I believe it might be an hour.

Q. During that hour, do you think you was ever nearer to the enemy than when you brought up and began to engage?

A. I believe we was something nearer, about two cables length distant, towards the latter part of the engagement.

Q. Did you observe the Yarmouth at any time of the action? if you did, relate to the Court her situation, and distance from the Cumberland.

A. I saw her quarter piece, looking out at the port; it was the time the French Admiral's second closed under the lee of their Admiral. I saw her out of the foremost port on the larboard side; I took her to be about two points and a half on the Cumberland's larboard bow, at the distance of two-thirds of a cable length, as she appeared to me. It was towards the latter part of the action, I believe.

Prisoner asks.

Q. Was not the Cumberland continually engaged, from the time she first brought

brought up to engage, till the French Admiral bore away, and their rear passed the Cumberland?

A. Yes, Sir, we were always firing from some part or other of the ship.

Mr. William Shapter, Master's Mate of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. To pass the word.

Prisoner asks.

Q. After the Cumberland had been some time engaging with the ship opposed to her, and she went ahead, was not our head sails braced aback to pay the ship's head off, to go down nearer the enemy; and after her head was paid off, did not we fill the head sails, and go down till we got near the Admiral?

A. I remember bracing the head sails aback, hauling well in the weather braces; and I was told that the French were breaking the line; I went over to leeward, and I perceived they had so. But I don't remember seeing the head sails filled at that time: I remember to have seen them once filled, but can't say whether it was at this time or before.

Q. Was not the Cumberland almost continually engaged, from the time she first brought up to engage, till the French Admiral bore away, and the rear passed her?

A. Yes, Sir.

Q. Relate to the Court what orders you carried from Captain Brereton to the Officers of the Cumberland, at different times during the engagement.

A. While we were bearing down, I was ordered to tell the Officers not to fire till Captain Brereton gave orders, and when we brought up, I was sent down to order them to begin to fire; some time after I was sent down to desire the Officers to point the guns well, that they might do execution. When the French broke the line, I was sent down with orders to the Officers to fire at any of the French ships they thought they could reach.

Court's Q.—Do you know at what time the Cumberland first brought up to engage the enemy?

A. I can't say, as I had no opportunity of a watch, or the glass; I believe it might be something better than a quarter of an hour after the Admiral began to engage.

Q. Inform the Court what ship the Cumberland first fired at, and at what distance.

A. I had not the pointing of the guns, but I thought we were always firing at the French Admiral's second aftern: we were engaged at about half a mile distance.

Q. Do you know what situation the Cumberland was in from the Yarmouth at that time, and what distance?

A. Better than half a cable, and not quite a cable length aftern of the Yarmouth: we were rather upon the Admiral's weather quarter, or to windward of her wake.

Q. How long did the Cumberland continue in that situation?

A. I

A. I can't say, as I was not always on the quarter deck.

Q. Did you, at any time during the action, observe the general signal for coming to a closer engagement flying on board the Yarmouth or Queenborough; and at what time?

A. Yes, Sir, I saw it, the latter part of the action, flying on board the Yarmouth; I neither saw nor heard of it before, as I remember.

Mr. Steward Wilkinson, acting Boatswain of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. Upon the forecastle.

Q. Inform the Court what you particularly know relating to the Cumberland, from the time the Admiral bore down to engage the French squadron, to the time of the Cumberland first bringing up to engage.

A. I took no particular notice, I was busy in getting the long-boat out, and other duty; I believe we brought up to engage about ten or twelve minutes after the Admiral; we brought up right in the Admiral's wake, about three quarters of a cable length distance, or less.

Q. What ship in the French line did you begin to engage first?

A. We first began to engage the French Admiral's second aftern, at about a cable length distance.

Q. Do you know how long the Cumberland was engaged?

A. I can't say.

Q. At the time the Cumberland first brought up to engage, did you observe the situation of the rear of the French line from their Admiral, and at what distance they were from each other?

A. I can't say I took any particular notice of them.

Q. Did the Cumberland continue in the situation you have related, during the whole action?

A. She continued so during the whole action, and rather nearer the Admiral sometimes.

Q. As you observ'd the Yarmouth all the time, was the Cumberland never to windward or to leeward of her?

A. She sometimes fell off, and came to.

Q. What was the greatest distance that you observ'd the Cumberland from the Yarmouth, at any time during the action?

A. A cable length.

Q. Was the French ship you engaged, right aftern of the Admiral, or to windward, or to leeward of him?

A. Sometimes to leeward, and sometimes to windward.

An ACCOUNT of the rigging shot away in the engagement, is produced, and the Boatswain acknowledges it to be the account he delivered to Captain Brereton, and signed by himself.

Jibb guys	—	—	—	One pair
Fore topmast stay	—	—	—	One
		k		Jibb

Jibb stay	—	—	—	One
Fore topmast stayfail halliards				
The collar of the fore stay				
The outer gammoning of the bowsprit				
The spritsail topfail sheets, lifts, and braces				
Spritsail brace	—	—	—	One
Fore shrouds	—	—	—	One pair
Fore topmast backstays	—	—	—	Two pair
Lanyards of the fore shrouds		—	—	Two
Fore topmast shrouds	—	—	—	One pair
Fore topgallant shrouds	—	—	—	One pair
Fore topgallant backstays	—	—	—	Two pair
Fore topgallant braces and pendant				
Fore topgallant tye				
Fore topfail reef tackle, pendant, and fall			—	One
Fore topfail halliards	—	—	—	One pair
Middle stayfail, and main topgallant stayfail uphaulers and tack				
Fore topmast studding fail halliards			—	Two pair
Fore buntlines and leechline falls				
Fore topblock	—	—	—	One
Fore and mainstay tacklefalls				
Shank painters of the small bower anchor				
Fore brace pendants				
Fore top bowlines				
Spritsail clewline	—	—	—	One
Fore topgallant stay				
Main topfail sheet	—	—	—	One
Fish tacklefall				
Main topgallant shrouds	—	—	—	Two pair
Main topgallant backstays	—	—	—	Two pair
Main topgallant stay and bowline				
Main top bowline	—	—	—	One
Main topgallant lifts, and one clewline				
Main top crowfoot and euphroes				
Fore topfail clewlines				
Main topmast shrouds and backstays, two pair of each				
Main topmast stayfail, tacks, and sheets				
Fore topmast studding fail, downhaul, and sheet				
Mizen stay				
Mizen topmast shrouds and backstays	—	—	—	Four pair
The spann of the main topfail braces				
Main top tackle and cat blocks	—	—	—	One of each
The sheet cable cut through one strand				
All the sails very much cut and shattered				

STEWART WILKINSON.

Prisoner

Prisoner asks.

Q. Had the Cumberland her head sails braced aback twice, during the action, to pay her head off; and after her paying off each time, was not her head sails filled again, and her foresail set, and bore down to the enemy, till she run up close to the Admiral's stern before we shortened sail?

A. Yes.

Q. Did not you hear a person call from the Yarmouth, to tell us to make sail, and go by the Admiral, just after the French Admiral bore away?

A. They hailed us from the Yarmouth, at which time I called to the Captain on the quarter deck; he directly came to the gangway, and ordered the fore tack to be hauled on board; we try'd to wear under the Admiral's lee, but could not: just as the sheet was aft, the Admiral's boat came alongside; we made sail, and shoot by the Admiral's weather quarter, and run ahead of him.

Mr. John Harding, Captain's Clerk of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. On the quarter deck, to minute down signals.

Q. Inform the Court what signals you observed on board the Yarmouth, and repeated by the Queenborough, from the time the Admiral bore down to engage the enemy, to the time the action was over, and at what time they were made?

A. The first signal I observed the Admiral made, after he bore away, was the Weymouth and Newcastle's signals; the next I saw was the red flag at the main topmast head, and the union flag at the Admiral's main topmast head, just before the French Admiral bore away.

Andrew Monack, Quarter Master of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. At the wheel, Sir.

Prisoner asks.

Q. When our Admiral bore down on the French Admiral, and the Cumberland shivered her after-sails to follow him, did not you, in obedience to Captain Brereton's orders, put the helm aweather, and keep it there all that time, till we got down in the Admiral's wake; and did not I often call to you from the gangway as he was conning, "Hard a starboard," "Hard aweather," "Keep your helm hard aweather?"

A. Yes, the helm was hard up all the time, till we brought up astern of our Admiral, which was a quarter of an hour and better.

Q. When the Cumberland had her headsails braced aback, to pay her head off, did you not, in obedience to Captain Brereton's orders, keep the helm a-lee till the Cumberland had filled and gathered way; and then did not you, as you was directed, put the helm aweather, and keep it there until we were obliged to shorten sail, by our being close to the Admiral's stern?

k 2

A. Yes

A. Yes, as soon as possible ever I could.

Q. Did you not do the same a second time, with regard to the helm so mentioned in the two foregoing questions?

A. Yes, I did, as soon as 'twas in my power.

Q. What was the most you fell off while the helm was aweather?

A. I can't tell; the two bittacles were together; I went by the conn; we brought the wind upon our starboard quarter.

Q. Did you observe the Admiral while you was at the helm, and after the Cumberland was engaged?

A. I saw her when we engaged, she was right ahead, afterwards she was upon the weather bow; I can't tell whether the Cumberland was close by the wind at that time or not.

William Smith, Seaman, of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. At the after-part of the wheel, on the starboard side.

Prisoner asks.

Q. Did not Lieutenant Lewis order you to turn the half-hour glass just as the Cumberland began engaging?

A. Yes.

Q. Relate to the Court how many times you turned it during the time the Cumberland was engaged.

A. Three times, from the time of our first engaging, to the time we left off engaging; it run out twice, and above half another. I believe the engagement continued an hour and a quarter; I had no watch, I could not say for minutes.

Half past Five, the Court adjourned to Monday morning, Seven o'Clock.

June 26th, 1758. On Monday morning, at Seven o'Clock, the Court met according to adjournment.

Mr. John Harding, Clerk of the Cumberland, was called into Court, and sworn a second time.

Q. You have got the minutes that were taken the day of engagement, in regard to the signals?

A. Not what I took during the engagement; these are lost; but those I have are a true copy, taken two days after by myself from the original.

Q. Relate to the Court what you know of the signals that were made on board the Yarmouth, from the time of the Admiral's bearing down, to the end of the action?

A. The signal for battle was the red flag at the Yarmouth's main topmast head, about three o'clock; at thirty-five minutes past three, I observed the Weymouth's and Newcastle's pendants; at four, I observed a union flag at the fore topmast head, and another at the mizen topmast head; at half past

four, I observed the Cumberland and Weymouth signals; and at that time I saw the union flag at the mizen topmast head, and not before: these are all the signals that I saw before the French bore away.

An ACCOUNT of damages received in the hull, masts, yards, &c. during the action, is produced by the prisoner, and delivered into Court.

The head of the fore topmast damaged by a shot below the cap.

The body of the foremast damaged by a shot about seven feet above the forecastle, but the depth I cannot find.

The foreyard damaged by two shot; in the first quarter of the larboard arm, one through, and the other about half through; the same shot cut the studding sail boom (on the yard) in two.

The cross jack-yard damaged by two shot; one in the first quarter of the starboard arm, and the other about half through in the larboard arm.

Two ruff spars by the shot much damaged.

A spare main topsail yard shot about five feet from the end; a spare flying jibb boom shot in the middle; two studding sail booms by the shot much damaged; a topgallant studding sail yard arm shot off; one of the stumps shot through in the middle; four timber heads shot away; part of the breastwork of the quarter deck, and all the gangway, shot away.

One port on the larboard quarter much damaged.

The starboard quarter shattered by shot; a pillar on the gun deck shot about three quarters through; the larboard round-house shot away; one shot in the lyon; the larboard pump cistern shattered to pieces by our guns flying in: in different parts of the larboard side received thirteen shot.

The fore topmast damaged by a langrage shot, which appears about one inch out, but the depth I cannot tell; the fore topmast studding sail yard damaged by a langrage shot.

GEORGE CHURCH.

Mr. George Church, carpenter of the Cumberland, sworn.

Q. Where was you quartered, on board the Cumberland, the 29th of April last, the day of action?

A. In the wing, in the hold, and all parts of the ship.

Q. Is that a true account of the damages received in the action, delivered in to Captain Brereton, and signed by you?

A. Yes, it is a true account, except something that I have found out since.

Mr. John Spencer, Midshipman of the Yarmouth, called, and sworn a second time.

Q. Have not you made a remark in writing, that you took notice of the Cumberland, after she had been engaged some time, got down, and engaged the French Admiral's second astern much nearer than she did before?

A. I have, in the minutes I gave to the Admiral, as well as mentioned to the Court before.

Lieutenant

Lieutenant Lewis, of the Cumberland, called, and sworn a second time.

Q. Did you at any time, before, or during the action, perceive in Captain Brereton's countenance, or his behaviour, any marks of fear or confusion, or any thing unbecoming his character; or did you take notice, that when he gave any orders, that they were delivered with resolution and without diffidence?

A. No, I did not observe any marks of fear, either in Captain Brereton's countenance or behaviour; but took notice, when he delivered any orders, it was with resolution, and without diffidence.

Mr. John Bruce, Master of the Cumberland, called, and sworn a second time.

Prisoner asks.

Q. Did you at any time, before, or during the action, perceive in Captain Brereton's countenance or behaviour, any marks of fear; or did you take notice, when he gave orders, it was with resolution and without diffidence?

A. No, I did not perceive any marks of fear or confusion; but all the orders he gave was with discretion, and much like an Officer.

Lieutenant James Bulteel, of the Cumberland, called, and sworn a second time.

Prisoner asks.

Q. Did you at any time, either before, or during the action, perceive in Captain Brereton's countenance, or by his behaviour, any marks of fear or confusion, or any thing unbecoming his character; or did you take notice, when he gave any orders, that they were delivered with resolution and without diffidence?

A. I never saw any marks of fear or confusion; but he behaved himself calmly, as becoming a good Commander and a loyal subject.

Q. *by Court.*—When you neared the enemy, by bearing down, did you observe the Yarmouth bear down?

A. Yes, I believe she did, otherwise I thought we were in a good station before.

Captain Brereton then read to the Court a paper, containing some reasons why he could not wear the Cumberland clear of the Admiral, &c.

“GENTLEMEN,

“I beg leave to offer one thing more to your consideration: on reflecting on Mr. Bruce's deposition, I observe, that the Court has asked, whether the spritsail and spritsail topsail were bent; it is natural to conclude from that question, the gentleman who proposed it thought they might be of some use to wear the ship: but here I must beg leave to say, that I had no reason to think that the ship would not wear with the sail then set upon her. Indeed she did wear, and would have done perhaps effectually, had not I been interrupted, at those very periods, by the ships astern; for if the Court will please to remember,

member, the first time the ship was braced aback to pay her head off, the Newcastle run up close to the Cumberland's stern, which obliged me to brace about, and as I was not a cable length distant from the Yarmouth, that space was insufficient for the Cumberland to wear, so as to go clear of the Yarmouth.

"The next time, the Court will please to remember, was when the Weymouth ranged up on our weather quarter, and fired a shot into us. I have mentioned, in my defence, that I hailed her, to lay all aback, to give me time to pay off more; but finding she did not shorten sail, or give me an answer, and fearing she would be aboard of me, if I continued to lay in that position, I was under a necessity of filling immediately, though our head was not so much paid off as I intended.

"As to the spritsails, I really could not think of setting them, as they would have prevented my seeing the Admiral, and, consequently, endangered my running on board him, having so little room as the length of a cable to work the ship in.

"W. BRERETON."

At ten o'clock the Court adjourned, to sum up the evidence.

Tuesday 27th June 1758, at five P. M. the Court met, the prisoner brought in, and the audience admitted, and the Resolutions of the Court read as follows, viz.

Resolution I. Unanimously. It appears, that some minutes before three o'clock in the afternoon of the 29th of April last, when Vice Admiral Pocock bore down in the Yarmouth to engage the French commanding ship, the ships in the rear of his Majesty's Squadron, under his command, were formed in a regular line ahead, with the starboard tacks on board, agreeable to the signal then flying.

II. Unanimously. It appears, that the Cumberland bore away at the same time the Admiral did.

III. Unanimously. It appears, that the Cumberland brought up to engage about a quarter of an hour after the Admiral, and the ships in the van, had engaged, about a cable length distance from the Yarmouth, rather to windward out of the line, about point-blank shot distance from the enemy.

IV. Unanimously. It appears, that when the Admiral bore away, the Cumberland had her foresail, topgallant sails, jibb, and staysails set, and that she braced up her head sails, shivered her after sails, and put the helm aweather; and that the ship's being long in wearing, was the cause of her not getting into action as soon as the Admiral.

V. Four Yeas to one No. That the Cumberland came down with a proper fail: the No's reason is, that it appears the ship flew against her helm.

VI. Unanimously. It appears, that the signal for battle was made on board the Yarmouth about three o'clock in the afternoon of the 29th of April last, and repeated on board the Queenborough, and the signal for a closer engagement

engagement about twelve minutes after, and repeated as before, and continued flying till the French ships broke their line and bore away.

VII. Unanimously. It appears, that Captain Brereton, in the Cumberland, did not, at any time during the action, engage the enemy as close as the Admiral did, which the signal flying on board the Yarmouth, and repeated by the Queenborough, directed him to do.

VIII. Unanimously. It appears, that the Cumberland, from her first bringing up astern of the Yarmouth, or rather to windward of the line, continued in action either with the French Admiral's second astern, or the French ship next to her, until the French ships broke their line and bore away, except about six or eight minutes while her head was paid off; and that she was nearer the enemy the latter part of the action than the first.

IX. Unanimously. It appears to the Court, that Captain Brereton used many endeavours to engage the enemy in the Cumberland, as close as the Admiral did; but did not use his utmost endeavours; for that, in order to have wore the Cumberland effectually, and to have got properly down to the enemy, when he was backing off to get nearer the enemy, he should have set the fore topgallant sail, hoisted the fore topmast stay-sail, and dropt the foresail; which appears to have proceeded from error in judgment only. Three of the members for only the fore buntlines and leech lines being let go, two for dropping the whole foresail.

X. Unanimously. It appears, that the Cumberland wears very bad in general, and worse on the day of action than usual, occasioned, in the Master's opinion, by three boats being towed astern, and that she has not been cleaned for near twenty-seven months.

XI. Unanimously. It appears, by the evidence of Mr. Bulteel, First Lieutenant, Mr. Lewis, Fifth Lieutenant, and the Master of the Cumberland, that they did not perceive any marks of fear or confusion in Captain Brereton's countenance, but that all the orders he gave, was with resolution and without diffidence.

XII. Unanimously resolved, That Captain Brereton falls under part of the eleventh Article of War, to wit, Not duly observing the orders of the Admiral, and not using all possible means to put the same in execution.

XIII. Then the Court came to the following unanimous resolution, That whereas it appears to them, that when Captain Brereton was backing to get nearer the enemy, he omitted setting the fore topgallant sail, the fore topmast stay-sail, and letting fall the foresail, which might have been a possible means of putting the Admiral's orders in execution, of engaging the enemy as near as he did; the Court, therefore, adjudged the said Captain William Brereton to lose one year's rank as a Post Captain: that is to say, if the Right Honourable the Lords Commissioners of the Admiralty shall think proper to confirm the said Captain William Brereton as a Post Captain, the said confirmation shall be one year after the date of his first commission, from Vice Admiral Pocock, as Captain of his Majesty's ship Queenborough.

Then

Then the Judge Advocate read the sentence, as follows, viz.

At a Court Martial assembled on board his Majesty's Ship Elizabeth, in Madras Road, upon the 22d of June 1758, and held every day afterwards, Sunday excepted, till the 27th day of the same month inclusive;

P R E S E N T,

Charles Steevens, Esq; Commodore, &c. President,

Captain Thomas Latham,
 Captain John Harrison,
 Captain Richard Kempensfelt,
 Captain John Stuckly Somerset.

The Court, pursuant to an order from George Pocock, Esq; Vice Admiral of the White Squadron of his Majesty's fleet, and Commander in Chief of all his Majesty's ships and vessels employed in the East Indies, to Charles Steevens, Esq; Commodore, &c. proceeded to enquire into the conduct and behaviour of Captain William Brereton, of his Majesty's ship Queenborough; who, in the absence of Captain William Martin, commanded his Majesty's ship Cumberland, by order dated the 29th March last; and to try him upon a charge, That, during the engagement between his Majesty's Squadron under the command of the said George Pocock, Esq; and the Squadron of the French King, on the 29th of April last, he did not continue in battle with his Majesty's ship Cumberland, but did withdraw, or keep back; and did not do his utmost to take or destroy the ships of the French King, which it was his duty to have engaged, and to assist such of his Majesty's ships as were engaged in fight with the French ships, which it was his duty to have assisted; in express disobedience to the signal for a closer engagement, which was made on board the Yarmouth soon after the signal for battle, and repeated on board the Queenborough, and continued flying till after the French ships broke their line, and bore away: And having heard the evidence, and the prisoner's defence, and very maturely and thoroughly considered the same, they are unanimously of opinion, that he falls under part of the charge, viz. Of not duly observing the orders of the Admiral, and not using all possible means of putting the same in execution, to engage the enemy as near as the Admiral did; which appears to have proceeded from error in judgment only, and not intentionally, nor for want of personal courage; and do therefore unanimously agree, that he falls under part of the eleventh article of an Act of Parliament, passed in the twenty-second year of his present Majesty, for amending, explaining, and reducing into one Act of Parliament, the laws relating to the government of his Majesty's ships, vessels, and forces by sea:

the Court do therefore unanimously adjudge the said Captain William Brereton to lose one year's rank as a Post Captain; that is to say, If the Right Honourable the Lords Commissioners of the Admiralty shall think proper to confirm Captain Brereton as a Post Captain, the said confirmation shall take place one year after the date of his first commission from Vice Admiral Pocock, as Captain of his Majesty's ship Queenborough; and he is hereby sentenced to lose one year's rank accordingly.

JN^r. MICHIE,
Deputy Judge Advocate.

CHA^s STEEVENS.
THO^s LATHAM.
JN^o HARRISON.
R^p KEMPENFELT.
J. S. SOMERSET.

After sentence passed, Captain Brereton was released, and the suspension taken off, by the following order.

By George Pocock, Esq; Vice Admiral of the White Squadron of his Majesty's fleet, and Commander in Chief of all his Majesty's ships and vessels employed in the East Indies.

WHEREAS you was suspended from the command of his Majesty's ship Cumberland, by my order dated the 7th instant, until your conduct should be enquired into at a Court Martial; and that enquiry having been made, and sentence passed thereon; I do hereby take off the said suspension, and require and direct you to take upon you the command as acting Captain of his Majesty's said ship Cumberland, by virtue of my order dated the 29th March last, until farther order. Dated on board his Majesty's ship Yarmouth, in Madras Road, the 28th June, 1758.

G. POCOCK.

To Captain William Brereton, of his Majesty's ship Queenborough, acting Captain of his Majesty's ship Cumberland for the time being.

By command of the Admiral,

JN^r. MICHIE.

APPENDIX (E.)

Copy of a Report from the Right Honourable the Lords Commissioners of the Admiralty, on Captain Brereton's Memorial.

May it please Your Majesty,

YOUR Majesty having been pleased, by Your order in Council of the 10th instant, to refer unto us, for our consideration and opinion, a copy of a memorial from Captain William Brereton; setting forth, amongst other things, that, during the time he was in the East Indies, he commanded his Majesty's ship the Cumberland; and on the arrival of the French fleet, the English squadron engaged, and defeated them, off Pondicherry. Some time after it was insinuated, that the Cumberland had not done her duty in the action; whereupon Admiral Pocock thought proper to order the petitioner's conduct to be enquired into at a Court Martial; which was held accordingly; and the Court unanimously agreed, that the Cumberland had done her duty; but, under the frivolous pretence of an ideal error in judgment, the majority of the Court found means to deprive the petitioner of a year's rank in Your Majesty's service: And praying, for the reasons therein set forth, that Your Majesty will be graciously pleased to restore him to his former rank:

We have, in obedience to Your Majesty's commands, taken the said memorial into our consideration; and do find, That, at a Court Martial held by Commodore Steevens, on the 28th June, 1758, the Court were unanimously of opinion, that Captain Brereton fell under part of the charge against him, viz. Of not duly observing the orders of the Admiral, and not using all possible means of putting the same in execution, to engage the enemy as near as the Admiral did; which appeared to have proceeded from error in judgment only, and not intentionally, nor for want of personal courage; and that he was therefore sentenced to lose one year's rank as a Post Captain: But, in regard to his good behaviour in subsequent engagements between Your Majesty's ships and those of the French, in the East Indies; and that his conduct was very commendable, both at the reduction of Manila, and afterwards, when the
command

APPENDIX (E.)

command of Your Majesty's Squadron devolved on him, by the departure of Sir Samuel Cornish from the Indian Seas; we do most humbly recommend him to Your Majesty, as an Officer deserving Your Royal favour.

Signed

Admiralty Office,
March, 1766.

EGMONT.
CHARLES SAUNDERS.
A. KEPPEL.
J. BULLER.

(A Copy.)

APPENDIX (F.)

His Majesty's Order in Council.

At the Court at St. James's, the 21st of March, 1766.

P R E S E N T,

The KING's Most Excellent MAJESTY in Council.

UPON reading at the Board the said report from the Right Honourable the Lords Commissioners of the Admiralty, dated the 1st of this instant;

His Majesty this day took the said report into consideration; and is pleased, with the advice of His Privy Council, to order, as it is hereby ordered, That the memorialist be restored to his former rank in the navy. And the said Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.



F I N I S.